

# **EXHIBIT A**

CONFIDENTIAL

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re: )  
)  
SECURITIES INVESTOR )  
PROTECTION CORPORATION, )  
)  
Plaintiff-Applicant, )  
)  
vs. ) 08-01789 (SMB)  
)  
BERNARD L. MADOFF )  
INVESTMENT SECURITIES, LLC, )  
)  
Defendant. )  
)  
)  
In re: )  
)  
BERNARD L. MADOFF, )  
)  
Debtor. )  
)

Videotaped Deposition of BERNARD L.  
MADOFF, VOLUME I, taken on behalf of the Customers,  
before K. Denise Neal, Registered Professional  
Reporter and Notary Public, at the Federal  
Correctional Institution, 3000 Old Highway 75,  
Butner, North Carolina, on the 26th day of April,  
2017, commencing at 9:07 a.m.

\* \* \* \* \*

CONFIDENTIAL

<p>Page 2</p> <p>1 APPEARANCES OF COUNSEL:</p> <p>2 On Behalf of the Customers:</p> <p>3 HELEN DAVIS CHAITMAN, Esq.</p> <p>4 Chaitman, LLP</p> <p>5 465 Park Avenue</p> <p>6 New York, New York 10022</p> <p>7 (908) 303-4568</p> <p>8 hchaitman@chaitmanllp.com</p> <p>9</p> <p>10 On Behalf of the Trustee:</p> <p>11 DAVID J. SHEEHAN, Esq.</p> <p>12 AMANDA E. FEIN, Esq.</p> <p>13 Baker Hostetler</p> <p>14 45 Rockefeller Plaza</p> <p>15 New York, New York 10111-0100</p> <p>16 (212) 589-4621</p> <p>17 afein@bakerlaw.com</p> <p>18</p> <p>19 On Behalf of the Deponent:</p> <p>20 PETER A. GOLDMAN, Esq.</p> <p>21 12 Fairlawn Parkway</p> <p>22 Rye Brook, New York 10573</p> <p>23 (914) 935-6857</p> <p>24 pagoldman@gmail.com</p> <p>25</p>	<p>Page 4</p> <p>1 INDEX OF EXHIBITS (Continued)</p> <p>2 FOR THE CUSTOMERS: PAGE</p> <p>3 Exhibit Number 20, JPMorgan Chase 61</p> <p>4 statement - 12-2004</p> <p>5 Exhibit Number 21, JPMorgan Chase 62</p> <p>6 statement</p> <p>7 Exhibit Number 22, Bear Stearns statement 64</p> <p>8 - 8-1-05</p> <p>9 Exhibit Number 23, Documents - composite 67</p> <p>10 Exhibit Number 24, Morgan Stanley statement 70</p> <p>11 Exhibit Number 25, JPMorgan Chase position 72</p> <p>12 summary</p> <p>13 Exhibit Number 26, Fidelity statement - 73</p> <p>14 1-31-99</p> <p>15 Exhibit Number 27, Clothmasters statement 74</p> <p>16 - 8-31-91</p> <p>17 Exhibit Number 28, Account Canada document 75</p> <p>18 Exhibit Number 29, Appendix to Dubinsky 92</p> <p>19 report</p> <p>20 Exhibit Number 30, Copies of correspondence 94</p> <p>21 Exhibit Number 31, Bill Feingold expert 109</p> <p>22 report</p> <p>23</p> <p>24 * * * * *</p> <p>25</p>
<p>Page 3</p> <p>1 APPEARANCES OF COUNSEL:</p> <p>2 Videographer:</p> <p>3 Ken Morrison, CLVS</p> <p>4</p> <p>5 * * * * *</p> <p>6</p> <p>7 CONTENTS</p> <p>8 THE WITNESS: BERNARD L. MADOFF EXAMINATION</p> <p>9 BY MS. CHAITMAN 6</p> <p>10 BY MR. SHEEHAN 132</p> <p>11</p> <p>12 * * * * *</p> <p>13</p> <p>14 INDEX OF EXHIBITS</p> <p>15 FOR THE CUSTOMERS: PAGE</p> <p>16 Exhibit Number 15, Copies of Bloomberg 38</p> <p>17 trade tickets</p> <p>18 Exhibit Number 16, JPMorgan Chase 52</p> <p>19 statement - 2-2001</p> <p>20 Exhibit Number 17, 703 account statement 58</p> <p>21 - 6-2001</p> <p>22 Exhibit Number 18, JPMorgan Chase 60</p> <p>23 statement - 10-2002</p> <p>24 Exhibit Number 19, JPMorgan Chase 61</p> <p>25 statement - 12-2003</p>	<p>Page 5</p> <p>1 THE VIDEOGRAPHER: My name is Ken Morrison</p> <p>2 representing Veritext Legal Solutions. The date</p> <p>3 today is April 26th, 2017 and the time is 9:07 a.m.</p> <p>4 This is the deposition being held at Butner Federal</p> <p>5 Correctional Facility located at 3000 Old 75</p> <p>6 Highway, Butner, North Carolina 27509 and is taken</p> <p>7 by counsel for the Plaintiffs in the case of</p> <p>8 Securities Investor Protection Corporation,</p> <p>9 Plaintiff-Applicant, versus Bernard L. Madoff</p> <p>10 Investment Securities, LLC, Defendant.</p> <p>11 This case is being held in the United</p> <p>12 States Bankruptcy Court, Southern District of New</p> <p>13 York, Case Number Adversary Proceeding 08-01789</p> <p>14 (SMB). The name of the witness is Bernard L.</p> <p>15 Madoff. At this time would the attorneys present in</p> <p>16 the room identify themselves and the parties you</p> <p>17 represent and then our court reporter, Denise Neal,</p> <p>18 representing Veritext Legal Solutions, will swear in</p> <p>19 the witness and we can proceed.</p> <p>20 MS. CHAITMAN: Helen Davis Chaitman on</p> <p>21 behalf of a great number of claw-back Defendants.</p> <p>22 And, in fact, I'm taking the deposition. It's not</p> <p>23 the Trustee who's taking it.</p> <p>24 MR. SHEEHAN: Right.</p> <p>25 MR. GOLDMAN: Peter A. Goldman. I</p>

2 (Pages 2 - 5)

CONFIDENTIAL

<p style="text-align: right;">Page 6</p> <p>1 represent Bernard Madoff. 2 MR. SHEEHAN: David J. Sheehan with Baker 3 Hostetler, counsel to the Trustee. 4 MS. FEIN: Amanda Fein, Baker Hostetler, 5 for the Trustee. 6 (The witness was duly sworn by the court 7 reporter.) 8 MR. GOLDMAN: Keep your voice up. 9 BERNARD L. MADOFF, 10 having been first duly sworn, was examined and 11 testified as follows: 12 EXAMINATION 13 BY MS. CHAITMAN: 14 Q. Good morning, Mr. Madoff. 15 A. Good morning. 16 Q. Irving Picard has argued to Judge Bernstein 17 that you're not a credible witness and I want to ask 18 you a few questions about that. At the time you 19 confessed on December 11th, 2008 had you been 20 indicted? 21 A. No. 22 Q. At the time you confessed was there a 23 criminal investigation against you? 24 A. No. 25 Q. At the time you confessed was there an SEC</p>	<p style="text-align: right;">Page 8</p> <p>1 (Laughter on the record.) 2 MR. SHEEHAN: I apologize for that. I 3 apologize. Go right ahead. Go ahead. 4 MS. CHAITMAN: I'm kidding. 5 Q. (By Ms. Chaitman) Okay. At the time you 6 confessed you knew who Mark Rich was; didn't you? 7 A. Yes. 8 Q. And did you understand that Mark Rich had 9 escaped prosecution by moving to Switzerland? 10 A. Yes. 11 Q. And did you recognize that you could have 12 done the same thing, just moved to Switzerland with 13 Ruth with a couple of hundred million dollars and 14 lived out your life? 15 A. Yes. 16 Q. Now, at the time you confessed the global 17 economy had collapsed. Do you recall that? 18 A. Yes. 19 Q. Bear Stearns had collapsed in March 2008; 20 isn't that true? 21 A. Correct. 22 Q. And Lehman filed in bankruptcy in 23 October 2008? 24 A. Correct. 25 Q. And the stock market lost half its value</p>
<p style="text-align: right;">Page 7</p> <p>1 investigation against you? 2 A. No. 3 Q. At the time you confessed was there any 4 limitation on your ability to transfer funds? 5 A. No. 6 Q. At the time you confessed was there any 7 limitation on your ability to travel abroad? 8 A. No. 9 Q. So is it fair to say that you had the 10 option of taking a couple of hundred million dollars 11 and moving with your wife to Switzerland and living 12 out your life in Switzerland the way Mark Rich did? 13 A. I'm -- 14 MR. SHEEHAN: Objection to form. Let's 15 get this geared up because I don't want to 16 interrupt. I apologize. So I'm just going to say 17 objection. When I say that, it means as to form. 18 That's it. 19 MS. CHAITMAN: Okay. 20 MR. SHEEHAN: But just to preserve. 21 MS. CHAITMAN: Sure, sure. 22 MR. SHEEHAN: Okay. All right. I'll shut 23 up. 24 MS. CHAITMAN: I'm going to rephrase the 25 question because I was rudely interrupted.</p>	<p style="text-align: right;">Page 9</p> <p>1 when Lehman filed in bankruptcy; isn't that true? 2 A. Just about, yes. 3 Q. And you had a lot of wealthy people who 4 owed you about \$10 billion; isn't that true? 5 A. Correct. 6 Q. So instead of confessing to a crime which 7 would inevitably result in your spending the rest of 8 your life in prison, why didn't you move to 9 Switzerland or try to work out a negotiated 10 liquidation of your business? 11 A. Well, first of all, I knew that I was 12 guilty. I felt responsible. Secondly, I had made a 13 decision that the best thing that I could do for the 14 -- you know, to make restitution to my clients was 15 to try and convince certain people that were 16 responsible for creating my problem to threaten them 17 with turning them in with their complicit behavior 18 if they did not return the money that they owed me. 19 Q. Okay. And I just want to caution you. 20 We're going to speak a little bit about the four 21 families, but I don't want you to mention the names 22 of any of the people. 23 A. Okay. 24 Q. Now, when you met with the U.S. Attorney's 25 Office in December 2008, did you tell them the</p>

3 (Pages 6 - 9)

CONFIDENTIAL

Page 10	Page 12
<p>1 complete truth about what happened?</p> <p>2 A. Yes.</p> <p>3 Q. Since that time have you ever been</p> <p>4 dishonest when you testified about what happened?</p> <p>5 A. No.</p> <p>6 Q. Now, as I just mentioned, you've testified</p> <p>7 previously about the four families who had been your</p> <p>8 clients from the 1960s on. And, again, I don't want</p> <p>9 you to mention the names of any of those four</p> <p>10 families, but I just want to ask you a question.</p> <p>11 Was there a period prior to 1990 when Annette</p> <p>12 Bongiorno backdated trades from members of the four</p> <p>13 families?</p> <p>14 A. Yes.</p> <p>15 Q. Was that done without the knowledge of the</p> <p>16 members of the four families?</p> <p>17 A. No. They were aware of it. They had</p> <p>18 instructed her to do it.</p> <p>19 Q. They instructed her to backdate trades?</p> <p>20 A. Yes.</p> <p>21 MS. CHAITMAN: Okay.</p> <p>22 MR. SHEEHAN: Excuse me. What time period</p> <p>23 was that?</p> <p>24 MS. CHAITMAN: Before the 1990s.</p> <p>25 MR. SHEEHAN: Okay.</p>	<p>1 A. Sometime post-'92. As I started, you know,</p> <p>2 I was still buying it in '92 and also through most</p> <p>3 of '93. After that, that's when I stopped buying</p> <p>4 securities for split strike.</p> <p>5 Q. Okay. Now, you continued to have some</p> <p>6 customers who were in convertible arbitrage?</p> <p>7 A. Correct.</p> <p>8 Q. Did you continue so long as people were in</p> <p>9 convertible arbitrage, did you actually buy those</p> <p>10 securities?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. So it was only in the split strike</p> <p>13 that you stopped buying the securities?</p> <p>14 A. Correct.</p> <p>15 Q. Okay. Do you derive any kind of benefit</p> <p>16 from your testimony as to when the fraud started?</p> <p>17 A. No.</p> <p>18 Q. Does it benefit anyone in your family?</p> <p>19 A. No.</p> <p>20 Q. If the Trustee claims you're lying as to</p> <p>21 when the fraud started, is there any conceivable</p> <p>22 benefit that you enjoy by virtue of that testimony?</p> <p>23 A. No.</p> <p>24 Q. Does this testimony benefit any of your</p> <p>25 family members?</p>
Page 11	Page 13
<p>1 Q. (By Ms. Chaitman) Now, to your knowledge</p> <p>2 has the Trustee settled with each of these four</p> <p>3 families?</p> <p>4 A. I believe so.</p> <p>5 Q. Okay. You testified the last time you were</p> <p>6 deposed by me that the fraud did not begin until you</p> <p>7 began doing the split strike conversion strategy in</p> <p>8 1992?</p> <p>9 A. Correct.</p> <p>10 Q. Now, was it, as Judge Bernstein used the</p> <p>11 expression, a light switch? When you started doing</p> <p>12 a split strike, did you stop buying any securities</p> <p>13 for the split strike customers?</p> <p>14 A. No. I had started -- I had started buying</p> <p>15 -- doing the strategy for probably through 1993; but</p> <p>16 as more money came in, that's when my problem began</p> <p>17 because I couldn't put it all to work in the</p> <p>18 strategy. And I had committed that I would keep all</p> <p>19 the money working.</p> <p>20 Q. Okay. I just want to say one thing. I</p> <p>21 have seen statements as early as July 1991 which</p> <p>22 seem to be in split strike. Are you saying that it</p> <p>23 wasn't -- I'd like you to give me your best</p> <p>24 recollection of when you stopped buying securities</p> <p>25 for the split strike customers.</p>	<p>1 A. No.</p> <p>2 Q. Now, you testified that at some point in</p> <p>3 1992 you leased the 17th floor of the Lipstick</p> <p>4 Building?</p> <p>5 A. Yes.</p> <p>6 Q. And you bought a separate computer system</p> <p>7 for the people you moved to the 17th floor; is that</p> <p>8 right?</p> <p>9 A. Correct.</p> <p>10 Q. And that was called the IBM AS/400?</p> <p>11 A. Yes.</p> <p>12 Q. Now, was the IBM AS/400 on the 17th floor</p> <p>13 linked to outside sources, like other investment</p> <p>14 firms or DTC?</p> <p>15 A. No.</p> <p>16 Q. Now, the computers that were used on the</p> <p>17 18th and the 19th floors by the traders --</p> <p>18 A. Right.</p> <p>19 Q. -- were those Bloomberg terminals?</p> <p>20 A. Well, we have Bloomberg terminals all over</p> <p>21 the firm, yes.</p> <p>22 Q. Okay. Were the Bloomberg terminals linked</p> <p>23 to outside sources?</p> <p>24 A. Yes.</p> <p>25 Q. What outside sources were they linked to?</p>

4 (Pages 10 - 13)

CONFIDENTIAL

<p style="text-align: right;">Page 14</p> <p>1 A. I can't probably tell you all of them, but 2 they -- Bloomberg generally is linked to -- 3 basically, Bloomberg terminal gets information from 4 other information providers. They're also -- I'm 5 not sure, but they're also linked to probably the 6 depositories as well. They're not linked to other 7 brokerage firms. 8 Q. Okay. Now, when you testified that Annette 9 Bongiorno prior to 1990 had backdated trades for the 10 four families, were those carried out on the AS/400? 11 A. Yes. 12 Q. Okay. But before -- before you bought the 13 AS/400 in 1992, what kind of computer was she using 14 that she would backdate trades? 15 A. We had other small like, you know, 16 computers, what you would call them, just like, you 17 know, what you would use at home, you know, word 18 processors and, you know, NASDAQ terminals and 19 things of that sort. 20 Q. They were not linked to outside sources? 21 A. No. They were not linked, right. 22 Q. Now, was it -- you testified last time, and 23 correct me if my recollection is incorrect, but I 24 think what you testified last time is that it was 25 not illegal for you to sell short?</p>	<p style="text-align: right;">Page 16</p> <p>1 an unlimited right to sell naked shorts? 2 A. Correct. 3 Q. So was it illegal for you to send a 4 statement say beginning in '94 or whenever you 5 stopped buying the securities shown on the split 6 strike, was it illegal for you to send a statement 7 to a split strike customer that indicated that the 8 customer owned certain Fortune 100 company stocks 9 when you hadn't purchased them? 10 A. No. It was not illegal. 11 Q. Okay. So if it was not illegal for you to 12 sell unlimited naked shorts, what was illegal about 13 the split strike activity? 14 A. Well, what was illegal and what we did was 15 not reflect our short positions to the clients on 16 our audited financials. 17 Q. Because you had a debt to each client to 18 whom you sold naked shorts -- 19 A. Correct. 20 Q. -- in the amount -- the present value of 21 those securities; is that correct? 22 A. Correct. 23 Q. And that was a fraud on anyone to whom you 24 gave your financial statements; is that right? 25 A. Well, depends upon how you define fraud.</p>
<p style="text-align: right;">Page 15</p> <p>1 A. Correct. 2 Q. And that was because -- can you explain? 3 A. It's an obligation if you're -- if 4 you're -- first of all, any brokerage firm can sell 5 short, you know, just as any client can sell short. 6 That's a typical way of doing business, you know. 7 So you as a client could instruct your broker to -- 8 to execute a short sale. 9 Brokerage firms more routinely go short 10 stock to complete their customer orders at times if 11 they don't have them in their inventory. If you're 12 a market making firm like I was, you're obligated to 13 honor your market, which requires you to go short, 14 you know, at times. 15 So going short is a regular, every day 16 business. A firm like ours, you know, regular 17 trading inventory typically would have hundreds of 18 millions of dollars, probably \$500 million short all 19 the time. 20 Q. Okay. But a naked short is where you're 21 selling short but you don't own the security; right? 22 A. The definition of a short sale is naked. 23 It means that you're selling something that you 24 don't own at the current time. 25 Q. Okay. And as a market maker did you have</p>	<p style="text-align: right;">Page 17</p> <p>1 It was a bookkeeping violation. I don't think 2 anybody initially would consider it a fraud. You 3 know, that's -- well, I just don't know. I would 4 say that it clearly was an SEC violation. 5 Q. And is it fair to say that the SEC reviewed 6 the financial information that you submitted in your 7 focus reports on a monthly basis? 8 A. Regularly, yes. 9 Q. And if you showed a massive debt to your 10 customers, your investment advisory customers, what 11 would they have done? 12 A. It would have been a violation. You 13 probably would have been suspended. 14 Q. You would have been suspended as a broker? 15 A. Correct. 16 Q. Okay. So in your view was the crime simply 17 that you didn't properly disclose the debt to your 18 customers on your financial statements? 19 A. Correct. 20 Q. Now, you've testified this morning that you 21 think either at the end of '93 or early '94 you 22 stopped buying securities for your customers, and I 23 just want to get a better understanding of why that 24 occurred at that time. You had -- I think you said 25 you made a commitment to your clients to put them in</p>

5 (Pages 14 - 17)

CONFIDENTIAL

<p style="text-align: right;">Page 18</p> <p>1 this strategy?</p> <p>2 A. Correct.</p> <p>3 Q. And what happened at the end of '93 or</p> <p>4 early '94 that you could no longer do that?</p> <p>5 A. The markets had gone into a -- into a slump</p> <p>6 because of a number of things, you know, starting</p> <p>7 with the Mideast Crisis at that time. So there was</p> <p>8 a lack of liquidity. This particular strategy that</p> <p>9 we used, the split strike strategy, requires certain</p> <p>10 market conditions to be able to execute it properly.</p> <p>11 And we didn't have those conditions.</p> <p>12 So because I had committed when I took in</p> <p>13 the money from the clients, primarily they were</p> <p>14 hedge funds, I had made a commitment to keep the</p> <p>15 money working constantly. Because I couldn't do</p> <p>16 that, I started to short the securities, which was</p> <p>17 as I said, not a violation at the time I was</p> <p>18 shorting the stock. It only became a violation when</p> <p>19 I filed my financial reports.</p> <p>20 I thought that would just be a temporary</p> <p>21 situation for the market to, you know, recover and</p> <p>22 improve and then I would have started doing the</p> <p>23 strategy. In the interim the money that the</p> <p>24 customers came in, I basically kept it located in</p> <p>25 Treasury bills.</p>	<p style="text-align: right;">Page 20</p> <p>1 I wasn't buying.</p> <p>2 Q. Right. Now, in late 1993 or early 1994 was</p> <p>3 your business, you were operating at that point as a</p> <p>4 sole proprietorship; is that right?</p> <p>5 A. Yes.</p> <p>6 Q. Was your business insolvent?</p> <p>7 A. No.</p> <p>8 Q. At what point in time did you become</p> <p>9 insolvent? And when I say you, I mean your sole</p> <p>10 proprietorship or the limited liability company.</p> <p>11 A. I would say probably in the early 2000s,</p> <p>12 maybe somewhere between let's say '98 and 2002.</p> <p>13 Q. Okay. And what --</p> <p>14 MR. SHEEHAN: Can I just -- before you get</p> <p>15 an answer, two things. One is I don't know what</p> <p>16 insolvency means.</p> <p>17 MS. CHAITMAN: Oh, okay.</p> <p>18 MR. SHEEHAN: I'm going to ask to define</p> <p>19 that.</p> <p>20 MS. CHAITMAN: Okay.</p> <p>21 MR. SHEEHAN: And I'm not going to</p> <p>22 interrupt you again because I'm just going to have a</p> <p>23 continuing objection to leading questions, which is</p> <p>24 you're testifying more than he is, but I don't care</p> <p>25 about that. Just objecting. All right.</p>
<p style="text-align: right;">Page 19</p> <p>1 Q. Okay. So you took the money --</p> <p>2 A. Which is part of the strategy as well.</p> <p>3 Q. Right. So you basically took the money</p> <p>4 that went into the 703 account?</p> <p>5 A. Correct.</p> <p>6 Q. Which was the investment advisory</p> <p>7 customers' money?</p> <p>8 A. Correct.</p> <p>9 Q. And you purchased Treasury bills with that?</p> <p>10 A. Correct.</p> <p>11 Q. And in the early '90s the Treasury bills</p> <p>12 were bearing an interest rate of about six percent;</p> <p>13 isn't that true?</p> <p>14 A. No. They probably were -- you know, they</p> <p>15 were short-term T bills, so they were probably, you</p> <p>16 know, closer to three to four percent.</p> <p>17 Q. Okay. And that three to four percent was</p> <p>18 money that was earned by the customers --</p> <p>19 A. Correct.</p> <p>20 Q. -- whose money you were using?</p> <p>21 A. Correct.</p> <p>22 Q. And, in fact, the statements reflected the</p> <p>23 ownership of those Treasury securities?</p> <p>24 A. Correct. And they -- well, they also, you</p> <p>25 know, reflected the ownership of the securities that</p>	<p style="text-align: right;">Page 21</p> <p>1 Q. (By Ms. Chaitman) Okay, okay. When you</p> <p>2 say that your business became insolvent at some</p> <p>3 point between '98 and what did you say? 2000 --</p> <p>4 A. 2002.</p> <p>5 Q. Okay. What are the events that you're</p> <p>6 thinking about that --</p> <p>7 A. Well, because I was also returning -- there</p> <p>8 were client -- part of the strategy was to return</p> <p>9 profits that were earned to clients. So in order to</p> <p>10 do that, I was returning money from the 703 account</p> <p>11 to clients and, therefore, I wasn't able to buy</p> <p>12 either the securities or the treasuries. So there</p> <p>13 was a deficit.</p> <p>14 So because that wasn't reflecting the</p> <p>15 liabilities and I didn't have assets to back them up</p> <p>16 at some point, I would say that would be -- the firm</p> <p>17 would be insolvent.</p> <p>18 Q. Okay. So would it be fair to say that the</p> <p>19 insolvency arose from the differential between what</p> <p>20 the investment advisory customers' money was earning</p> <p>21 in Treasury bills versus the return you were paying</p> <p>22 them?</p> <p>23 A. Correct.</p> <p>24 Q. Did your formation of the limited liability</p> <p>25 company in -- it became effective January 2001, did</p>

6 (Pages 18 - 21)

CONFIDENTIAL

Page 22	Page 24
<p>1 that relate in any way to your feeling that your 2 firm had become insolvent? 3 A. I realize that that -- yeah, that there 4 were problems brewing, yes, I would say. 5 Q. Well, what motivated you to form a limited 6 liability company since you had been operating as a 7 sole proprietorship since 1960? 8 A. Well, I was always -- I had always been 9 advised to incorporate since I started my firm. I 10 never felt the need to do that because I was not 11 worried about, you know, ever being in a situation 12 that, you know, I would have any exposure. The firm 13 was always successful and, you know, it just never 14 really entered my mind. 15 So I just didn't do it, but then because 16 of what was going on with the stock market, the 17 market had -- had crashed in 2000 because of the -- 18 there was the bubble of the technology stocks, so 19 everybody became very nervous about the market in 20 general. 21 So there was a rush to incorporate or go 22 into an LLC type of mode. And the regulators had 23 also sort of started recommending to the industry 24 that everybody should basically do that. 25 Q. Now, Mr. Madoff, according to Mr. Dubinsky</p>	<p>1 Q. For all of the employees at first the sole 2 proprietorship? 3 A. Right, right. 4 Q. And then all of the employees at the LLC? 5 A. Yes. It never changed, right. 6 Q. Okay. And is it fair to say that at times 7 money went from the 703 account to the Bank of New 8 York account? 9 A. Yes. There were some instances that -- 10 that I used that, but the issue is because all of 11 these clients had margin accounts because they were 12 short securities, whether it be convertible 13 securities or whether it be the split strike trades, 14 their -- the assets of the client is fungible with 15 the firm because the long positions, whether it be 16 Treasury bonds or whatever, is the collateral for 17 the exposure on the short side of the firm. 18 So there were sometimes where relatively 19 small amounts of money, I think, in the late '90s 20 went from the 703 account into the Bank of New York 21 account to cover -- what was not, I don't think, 22 understood in the Dubinsky report among a lot of 23 other things was that customers have short 24 positions. They're mark to market from the clearing 25 corporation every day and short position being the</p>
Page 23	Page 25
<p>1 the three areas of your firm functioned as totally 2 separate legal entities, that is, market making, 3 proprietary trading and investment advisory. Is 4 that correct that each of these groups functioned as 5 a separate legal entity? 6 A. No. 7 Q. Were the expenses for -- the operating 8 expenses for each group paid solely out of the 9 revenues generated by that group? 10 A. They were -- all the expenses were paid 11 through a -- through the firm, but the money came 12 out of an expense account that was held at Bank of 13 New York. 14 Q. So there was one Bank of New York account 15 which covered all of the say overhead expenses? 16 A. All the operations of the firm. There was 17 a JP Morgan account. We referred to it as a 703 18 account. And that was exclusively used for client 19 monies in and client monies out -- 20 Q. Okay. And -- 21 A. -- for the investment advisory side. 22 Q. Okay. So all of the rent, personnel 23 expenses, general overhead was paid out of the Bank 24 of New York account? 25 A. Everything. Salaries, everything.</p>	<p>1 difference in the market. As the stock market goes 2 up, the short position goes up. The customer gets a 3 call which is called a margin call. 4 So typically the money would come from the 5 customer account to meet those margin calls. So we 6 had -- we had margin calls that we had to make to 7 the clearing corporation, which all that which was 8 done through the Bank of New York account. 9 So by taking the money from the client 10 account, putting it into the Bank of New York 11 account, that allowed us to meet the margin calls of 12 the clearing corporation. That is typical of the 13 industry. 14 Q. Okay. Now, I want to ask you something 15 else since you've mentioned the margin. If you -- 16 if someone had a margin loan and you bought stock 17 for them -- 18 A. Right. 19 Q. -- would that stock be segregated in a 20 clearing or custody account for that customer? 21 A. No. 22 Q. Why is that? 23 A. Because margin, the whole concept of a 24 margin account is the firm is allowed to use those 25 securities to borrow money to cover, you know, what</p>

7 (Pages 22 - 25)



CONFIDENTIAL

<p style="text-align: right;">Page 26</p> <p>1 the customer is requesting to be able to purchase 2 securities. The brokerage firm also has to deliver 3 securities if the firm that he sold it to for the 4 customer who needs delivery. 5 So he has to go out and borrow securities. 6 And to borrow the securities to make the delivery, 7 he has to -- he has to borrow them from another 8 brokerage firm. He has to pay them for those 9 securities. So the only -- the only securities that 10 are segregated for a customer are what's called 11 fully paid for securities where there is no 12 liability or debt involved in the firm. 13 Q. Okay. Now, you've explained that the fraud 14 was in the split strike, but if you had an 15 investment advisory customer who instructed you to 16 buy a specific position for them and you gave them a 17 margin loan to do that, did you actually execute 18 those sales? 19 A. We always execute the sales. Whatever was 20 reflected on the customer statement, we executed. 21 We executed the sales to the customer. You know, we 22 wouldn't have executed them in the market unless we 23 were doing a strategy, unless we were also buying 24 securities. 25 Q. Okay. But where a customer made a specific</p>	<p style="text-align: right;">Page 28</p> <p>1 buying treasuries when we start the split strike 2 conversions. So that would have been, you know, in 3 the '90s. 4 Q. Okay. And to the best of your recollection 5 at any given time how much investment advisory 6 customers' money was held in U.S. treasuries? 7 A. Well, I would say basically the maximum 8 that we had was between five firms we had about 9 two-and-a-half billion dollars between Morgan 10 Stanley, Lehman Brothers, Bear Stearns and Fidelity. 11 Was that five firms? Four firms. And JP Morgan. 12 Q. Okay. 13 A. So I would say probably the maximum was 14 probably about \$6 billion held in treasuries. 15 Q. Okay, okay. Did it fluctuate or did you 16 instruct your staff to maintain that amount? 17 A. No. It pretty much fluctuated depending 18 upon the monies that came in and the monies that -- 19 monies that came out. 20 Q. What percentage of the investment advisory 21 customers' money was put in Treasury securities, if 22 you can estimate that? 23 A. Well, I mean, the most we had -- I mean, 24 the customer statements depending, you know, at the 25 end was 60 some odd billion dollars.</p>
<p style="text-align: right;">Page 27</p> <p>1 instruction to you to buy a specific stock, are you 2 saying that you always executed those instructions? 3 A. The customer didn't usually give us 4 instructions. These accounts are handled basically 5 as sort of discretionary accounts. So once the 6 customer opened the account to go into this 7 particular strategy, the firm had the -- had the, 8 you know, allowance to be able to execute the 9 strategy whenever he saw fit. 10 Q. No, but I'm thinking of customers who were 11 not in split strike, investment advisory customers 12 who had you as their investment advisor but they 13 instructed you as to what stocks to buy and sell. 14 A. We didn't -- we basically did not do that 15 kind of business. 16 Q. Now, in the government's deferred 17 prosecution agreement with JPMorgan Chase, the 18 government and the bank stipulated that during the 19 period from 2003 to 2008 you maintained on deposit 20 at JPMorgan Chase three to six billion dollars. Is 21 that correct? 22 A. Yes. 23 Q. Did that amount -- was that only between 24 2003 or 2008 or had you done that earlier than 2003? 25 A. Well, there were certain -- we started</p>	<p style="text-align: right;">Page 29</p> <p>1 Q. Not what the statements showed, but what 2 you actually did. 3 A. What we actually did? 4 Q. Yeah. How -- 5 A. I don't understand your question. 6 Q. Let me step back a minute. Were the people 7 on the 17th, were any of the people on the 17th 8 floor authorized to buy Treasury securities? 9 A. Yes. 10 Q. Who was authorized to buy Treasury 11 securities? 12 A. Frank DiPascali, Eric Lipkin and a fellow 13 by the name of Robert Romer. 14 Q. And they were -- what money were they 15 authorized to use to buy the Treasury securities? 16 A. Whatever -- they followed the instructions 17 of basically Frank DiPascali, who was the manager of 18 that department. And the money, the money to buy 19 the securities always came from customer money 20 except for a small amount of treasuries or financial 21 instruments that came from the operating operations 22 of the market making proprietary trading side. 23 Q. Okay. So the money came from the 703 24 account, is that what you're saying, except for 25 the --</p>

8 (Pages 26 - 29)

CONFIDENTIAL

<p style="text-align: right;">Page 30</p> <p>1 A. For the most part, yes.</p> <p>2 Q. Except for the money that came from the BNY</p> <p>3 account?</p> <p>4 A. Right.</p> <p>5 Q. Okay. Now, did you ever have a lock-in</p> <p>6 period like hedge funds would have which would</p> <p>7 prevent a customer from immediately demanding a</p> <p>8 redemption on their money?</p> <p>9 A. No.</p> <p>10 Q. Was there any period of time from the end</p> <p>11 of 1993 to 2008 when you were unable to honor a</p> <p>12 customer redemption?</p> <p>13 A. No.</p> <p>14 Q. Was there anytime between 1993 and 2008</p> <p>15 when you felt that you couldn't redeem a customer's</p> <p>16 account unless you brought in new investment</p> <p>17 advisory customers?</p> <p>18 A. No. Well, I would say during -- in 2008</p> <p>19 probably that half the market was -- was collapsing.</p> <p>20 There would have been -- had customers requested</p> <p>21 money, I wouldn't have been able to do it, but no</p> <p>22 one had ever requested it.</p> <p>23 Q. Okay. So, well, you did have significant</p> <p>24 redemptions in 2008?</p> <p>25 A. Yes, at the very end in December.</p>	<p style="text-align: right;">Page 32</p> <p>1 Q. We talked last time about the fact that you</p> <p>2 maintained clearing accounts with various banks?</p> <p>3 A. Correct.</p> <p>4 Q. And can you just review the banks with</p> <p>5 which you had clearing accounts?</p> <p>6 A. Well, first of all, the firm itself was a</p> <p>7 self-clearing firm, which meant we had the ability</p> <p>8 to clear transactions. That was starting with the</p> <p>9 firm in 1960 through the very end, but most firms</p> <p>10 also had clearing arrangements with a number of</p> <p>11 banks to be able to service different types of the</p> <p>12 operations of the firm.</p> <p>13 So the firm at one point had clearance</p> <p>14 facilities with -- initially with Meadowbrook</p> <p>15 National Bank, then, you know, also Commercial Bank</p> <p>16 of North America. There was then Irving Trust</p> <p>17 Company, Bank of New York, Bankers Trust,</p> <p>18 Manufacturers Hanover, Chase Manhattan Bank, Marine</p> <p>19 Midland Bank, Chemical Bank, JP Morgan Bank,</p> <p>20 Continental Illinois Bank. I think that pretty much</p> <p>21 covers it.</p> <p>22 Q. M&amp;T?</p> <p>23 A. M&amp;T, yes. M&amp;T Bank.</p> <p>24 Q. Now, what services did these banks provide</p> <p>25 to you?</p>
<p style="text-align: right;">Page 31</p> <p>1 Q. Okay. And prior to December 2008 --</p> <p>2 A. But there was always -- there was -- you</p> <p>3 know, I never got an official request for redemption</p> <p>4 that I didn't have money to cover it to my</p> <p>5 recollection other than maybe the last week in</p> <p>6 December.</p> <p>7 Q. Okay.</p> <p>8 A. The last, you know, week that I was in</p> <p>9 business.</p> <p>10 Q. Okay. So in the entire period when you</p> <p>11 were not buying the split strike securities starting</p> <p>12 say late 1993 or early 1994, had you ever received a</p> <p>13 redemption request where you thought oh, my God,</p> <p>14 I've got to bring in a new customer to have the</p> <p>15 money to pay this?</p> <p>16 A. No.</p> <p>17 Q. Did you actively solicit new investment</p> <p>18 advisory customers?</p> <p>19 A. No.</p> <p>20 Q. Why not?</p> <p>21 A. Because the firm was in a position that we</p> <p>22 were always turning away investors. We never --</p> <p>23 never solicited, you know, new monies coming in. As</p> <p>24 a matter of fact, we tried to return monies at times</p> <p>25 but met resistance with clients.</p>	<p style="text-align: right;">Page 33</p> <p>1 A. Both loans, brokered and unbrokered loans,</p> <p>2 conversion, instructions to convert securities,</p> <p>3 drafts for election, you know, checking accounts,</p> <p>4 typical usually broker day loans, things -- you</p> <p>5 know, whatever, complete clearance facilities.</p> <p>6 Q. Did they have custodial accounts where you</p> <p>7 maintained securities for customers?</p> <p>8 A. Not that I'm aware of, no.</p> <p>9 Q. Did you have custodial accounts with anyone</p> <p>10 where securities were maintained for customers?</p> <p>11 A. Well, the -- we had securities at</p> <p>12 depositories, but they were not basically segregated</p> <p>13 for customers. That was the practice, quite</p> <p>14 frankly, that most brokerage firms never did any</p> <p>15 longer when securities -- as the industry progressed</p> <p>16 and you didn't have full physical securities in your</p> <p>17 own vaults.</p> <p>18 We always had some securities in our vault</p> <p>19 we had, but those are from many, many years ago.</p> <p>20 They were a relatively small amount of securities</p> <p>21 that we were holding or that we bought, you know;</p> <p>22 but for the most part all the securities were</p> <p>23 commingled, which was typical for a firm that</p> <p>24 operated the way we did where you had customers that</p> <p>25 were short securities.</p>

9 (Pages 30 - 33)

CONFIDENTIAL

Page 34	Page 36
<p>1 Whether or not we executed the transaction 2 or not, they had opened up, you know, accounts, what 3 would be deemed as a margin account, and that 4 automatically allows you to commingle the 5 securities. 6 Q. Okay. So you did have -- you did have 7 physical possession of the securities with the 8 margin accounts? 9 A. When we were buying them, yes. 10 Q. Okay. Now, you referenced the change from 11 physical securities to electronic securities. Can 12 you pinpoint when that occurred? 13 A. I don't remember any longer. I would say 14 sometime during the '90s. 15 Q. Would it help if I told you that the 16 Securities Investor Protection Act was enacted in 17 1970? 18 A. No. 19 Q. Okay. Now, when you were doing the 20 convertible arbitrage, did you ever use a strategy 21 called legging in? 22 A. Always. 23 Q. Okay. And can you explain what legging in 24 means? 25 A. Legging in means that when you're doing a</p>	<p>1 paid -- you started buying stock at 50 and you wound 2 up buying it at, you know, up to 51 and you had an 3 average of 50-and-a-half, you would -- you would 4 place five-and-a-half. 5 Q. Was that unique to you or was this 6 something -- 7 A. No. That's typical for any firm that is 8 investing in a strategy and treating -- you know, 9 that's treatable to customers the same in a 10 particular strategy. 11 Q. Now, you testified last time that Mr. 12 Dubinsky apparently lacked an understanding of that 13 strategy? 14 A. Well, he -- he must have. He must have not 15 understood the strategy because his report failed to 16 -- failed to state that. So, for example, where 17 Dubinsky, when he was trying to analyze the prices 18 that a customer paid in relationship to the market, 19 he would look on whatever the trade date was on the 20 confirmation. 21 And the trade date on the confirmation, for 22 example, would be -- an example I use would be the 23 trade date would be Thursday's trade date. If the 24 stock had traded at 51 and on that day if that was 25 the higher, the lower the stock and the average was</p>
Page 35	Page 37
<p>1 strategy, whether it be for convertible securities 2 or for the split strike, you go in and you don't buy 3 everything typically in one day. 4 You start -- when the firm makes a decision 5 to effect a strategy, whether it be convertible 6 bonds or whether it be a basket strategy and a split 7 strike where you're buying, you know, a portfolio of 8 securities, the skill of the strategy is to being 9 able to judge the market. 10 So you -- if when you're going out and 11 buying securities, you would start buying it let's 12 say on a Monday, Tuesday, Wednesday, Thursday. 13 Typically you would buy it over a four-day period 14 was basically what our practice is. And you would 15 have different prices during the four-day period. 16 And all of our strategies use what's 17 defined as an average price transaction, which means 18 we would then take the average price that we bought 19 stock during that four-day period and that would be 20 the -- you know, we'd figure what the average was 21 that we paid and then we would -- we would send the 22 customer a confirmation on the last day. 23 So let's say on a Thursday, we started on 24 Monday. And if you start -- to make a simple 25 example, let's say you did it over four days and you</p>	<p>1 50-and-a-half for the customer, there would be a 2 difference. So it wouldn't match up. Now, the 3 customer, the customer confirmation always stated -- 4 there was a legend on it that said that the 5 transactions effected for the customer was an 6 average price transaction. 7 So right away that would -- that would 8 illustrate that he wasn't accounting for the -- for 9 the fact that the transaction was an average price 10 transaction. 11 The same thing would happen when you -- the 12 same error he made when he accounted for volume 13 because he would just look at the volume that 14 occurred on the one day, on the date of the trade 15 date, as opposed to the volume that happened on the 16 four days. So, obviously, he's looking at the 17 volume on one day when you should be looking at the 18 volume on four days. 19 Q. Now, Mr. Madoff, Mr. Dubinsky testified at 20 the Bonventry trial that the Trustee paid him over 21 \$30 million to do his report. Did he at any time 22 ever seek to talk to you? 23 A. No. 24 Q. To your knowledge did he or anyone on his 25 behalf ever seek to meet with you to discuss how you</p>

10 (Pages 34 - 37)

CONFIDENTIAL

Page 38	Page 40
<p>1 operated the business?</p> <p>2 A. No.</p> <p>3 Q. Did anyone working with the Trustee ever</p> <p>4 ask you any questions about how your convertible</p> <p>5 arbitrage trades were done?</p> <p>6 A. No.</p> <p>7 Q. Did anyone working with the Trustee ever</p> <p>8 question you about any activity of the firm that</p> <p>9 predated 1992?</p> <p>10 A. No.</p> <p>11 Q. Now, you mentioned with respect to the</p> <p>12 purchase of Treasury securities with the investment</p> <p>13 advisory customers' money that the purchases were</p> <p>14 done through Bear Stearns, Morgan Stanley, Fidelity,</p> <p>15 Lehman Brothers and JPMorgan Chase?</p> <p>16 A. Right.</p> <p>17 Q. Were there also purchases done directly by</p> <p>18 Frank DiPascali, Eric Lipkin and Robert Romer?</p> <p>19 A. Correct.</p> <p>20 MS. CHAITMAN: I'm going to mark as</p> <p>21 Exhibit 15, which is the next number from our last</p> <p>22 deposition, a compilation of trade tickets. I have</p> <p>23 two if you each want one.</p> <p>24 (Customers Exhibit 15 was marked for</p> <p>25 identification.)</p>	<p>1 A. Yes.</p> <p>2 Q. And it would have been held for the benefit</p> <p>3 of the investment advisory customers?</p> <p>4 A. It would have been -- it would have been</p> <p>5 held at the firm for the benefit of the firm. We</p> <p>6 didn't segregate, you know, these securities.</p> <p>7 Q. But if the money that was used to purchase</p> <p>8 this --</p> <p>9 A. Uh-huh.</p> <p>10 Q. -- came from the 703 account, would this</p> <p>11 show up, for example, on your focus reports?</p> <p>12 A. This particular -- I don't know. I mean,</p> <p>13 the only trades that -- if it went through the</p> <p>14 Bloomberg terminal, typically that would show up --</p> <p>15 I don't know if it would show up on the focus</p> <p>16 report.</p> <p>17 It depends upon whether the trade was</p> <p>18 bought for -- there were some trades that were</p> <p>19 bought -- well, not if it was bought by the people</p> <p>20 that you mentioned. They only have the authority to</p> <p>21 execute trades for client accounts, not for the</p> <p>22 firm's account.</p> <p>23 Q. Okay. So I'm confused.</p> <p>24 A. These securities would be held either at --</p> <p>25 typically it would be held at DTC or the Bank of New</p>
Page 39	Page 41
<p>1 MS. FEIN: Thank you.</p> <p>2 MR. SHEEHAN: Thank you.</p> <p>3 Q. (By Ms. Chaitman) Mr. Madoff, do you</p> <p>4 recognize what these documents are?</p> <p>5 A. Yes. They're -- they're a copy of the</p> <p>6 Bloomberg terminal execution, meaning a trade that</p> <p>7 was executed through a Bloomberg terminal.</p> <p>8 Q. Okay. Now, could this be a phony document?</p> <p>9 A. No.</p> <p>10 Q. Why is that?</p> <p>11 A. Because we've got the ability to -- to</p> <p>12 create something like this.</p> <p>13 Q. Is that because it's a Bloomberg terminal?</p> <p>14 A. Yes.</p> <p>15 Q. So if we look at the first one, this was</p> <p>16 the trader was Eric Lipkin; right?</p> <p>17 A. Uh-huh.</p> <p>18 Q. The date was September 26, 2002; right?</p> <p>19 A. Uh-huh.</p> <p>20 Q. And the -- it was the purchase of a</p> <p>21 Treasury bill with a cost of \$998,461.94; is that</p> <p>22 right?</p> <p>23 A. Yes.</p> <p>24 Q. And this would have been purchased with</p> <p>25 money from the 703 account?</p>	<p>1 York.</p> <p>2 Q. Okay.</p> <p>3 A. I mean, I can't tell from that. It depends</p> <p>4 upon where the trade would settle. Any of these</p> <p>5 Bloomberg trades that went through the Bloomberg</p> <p>6 terminal, it would actually be a money settlement</p> <p>7 for the transaction. Otherwise, you couldn't -- you</p> <p>8 couldn't do it.</p> <p>9 Q. Okay. And that would be done through some</p> <p>10 ins --</p> <p>11 A. It would be done through some -- typically</p> <p>12 through Bank of New York.</p> <p>13 Q. Okay.</p> <p>14 A. It could also have been done through JP</p> <p>15 Morgan as well in delivery.</p> <p>16 Q. Okay, okay. You didn't have the ability</p> <p>17 yourself to clear Treasury security purchases?</p> <p>18 A. Correct. We didn't have the authority to</p> <p>19 execute and clear.</p> <p>20 Q. Treasury security purchases?</p> <p>21 A. Right.</p> <p>22 MS. CHAITMAN: Okay.</p> <p>23 MR. SHEEHAN: Helen, just for the record,</p> <p>24 this seems to be -- you did call it a compilation,</p> <p>25 but since there were different productions, one is</p>

11 (Pages 38 - 41)

CONFIDENTIAL

<p style="text-align: right;">Page 42</p> <p>1 AMF, another one is MAD Trustee, are you going to 2 for the record tell us how this was put together or 3 is that going to happen through your testimony? 4 MS. CHAITMAN: It's not, but I don't think 5 that we have to take up his time to do that. 6 MR. SHEEHAN: Okay. We can do it later. 7 MS. CHAITMAN: Yeah, sure. 8 MR. SHEEHAN: All right. Just take care 9 of it. 10 MS. CHAITMAN: They were all produced by 11 the Trustee. 12 MR. SHEEHAN: Okay. 13 Q. (By Ms. Chaitman) If you -- these are not 14 in continuous order. They didn't come from one 15 place, but I'm showing you one that was done where 16 the trader is Erin Reardon. 17 A. Ellen Reardon? 18 Q. Erin Reardon. 19 A. Erin, yes. 20 MR. SHEEHAN: What's the Bates number on 21 that? 22 MS. CHAITMAN: It's MAD TEE 00118284. 23 MR. SHEEHAN: Okay. 24 Q. (By Ms. Chaitman) Did she work under Frank 25 DiPascali?</p>	<p style="text-align: right;">Page 44</p> <p>1 703 account customers? 2 A. Yes. 3 Q. Is it fair to say that he would direct the 4 work of Eric Lipkin and Robert Romer? 5 A. Yes. 6 Q. And they reported to Frank? 7 A. Yes. 8 Q. Now, what was your purpose in instructing 9 Frank to maintain a portfolio of Treasury securities 10 up to \$6 billion using the 703 account money? 11 A. We had to put the money somewhere, so if we 12 were -- if it wasn't -- we would never keep the 13 money in cash. So if we weren't buying the 14 securities, we would put it into -- we would put it 15 into treasuries. 16 Q. Okay. And did you have some thought that 17 the three to six billion -- that was at JPMorgan 18 Chase. That the up to six billion in Treasury 19 securities was intended to protect any of your 20 customers? 21 A. Well, if it was -- it was customer money, 22 you know, yes. 23 Q. Okay. And in your mind over the years did 24 you have customers, investment advisory customers 25 that you wanted to protect more than others?</p>
<p style="text-align: right;">Page 43</p> <p>1 A. Yes. 2 Q. And then two pages on there is one executed 3 by Robert Romer? 4 A. Yes, same. 5 Q. He worked for Frank DiPascali? 6 A. Yes. 7 Q. Now, I'm skipping to a page which is 8 Public-USAO 0960973. Can you identify why that 9 format is different? Is that a different kind of 10 transaction? 11 A. I don't know what this is. I mean, I'm not 12 that familiar with it. It looks like a ticket for 13 -- for a treasury, trading of a treasury, but it's 14 actually from the Bloomberg terminals on here. So 15 it must be -- 16 Q. Okay. A different format? 17 A. -- a different format, right. 18 Q. Okay. And then on the next page, which is 19 Public-USAO 0961013, it indicates that the trader is 20 Frank? 21 A. Right. 22 Q. Is that Frank DiPascali? 23 A. Yes. 24 Q. And was it Frank's responsibility to 25 maintain the portfolio Treasury securities for the</p>	<p style="text-align: right;">Page 45</p> <p>1 A. No. 2 Q. Were you concerned about protecting the 3 European investors? 4 A. No. 5 Q. Why is that? 6 A. Well, because I was aware of the fact that, 7 first of all, they really weren't my customers. 8 They were customers of hedge funds. I was aware of 9 the fact that the -- that most of the hedge funds, 10 if not all of them, had structured product 11 arrangements with banks that they were guaranteed, 12 their principal was guaranteed and they were sharing 13 in the profits of the transaction. 14 So it was as far as -- I mean, basically, 15 they were all my customers. So I was obligated from 16 a legal standpoint whether -- you know, whether I 17 wanted to or not; but I would say that the -- I 18 looked at the individual clients which would -- who 19 had direct accounts with me differently than I did 20 with the hedge funds, particularly because the hedge 21 fund money that was pouring in was the thing that 22 caused me the problem. 23 Q. What about the feeder funds? Are you 24 putting them in the category of the hedge funds? 25 A. The who?</p>

12 (Pages 42 - 45)

CONFIDENTIAL

Page 46	Page 48
<p>1 Q. The feeder funds?</p> <p>2 A. Those are the hedge funds.</p> <p>3 Q. Those are the hedge funds. Okay. So were</p> <p>4 you buying the Treasury securities then to protect</p> <p>5 the private customers as opposed to the hedge funds?</p> <p>6 A. I didn't look at it, you know. I didn't</p> <p>7 isolate it one over the other because I knew I was</p> <p>8 basically obligated for -- you know, for all of it.</p> <p>9 Q. Okay. Now, you said that you purchased</p> <p>10 Treasury securities with the 703 account money</p> <p>11 through the five institutions that you named?</p> <p>12 A. Right.</p> <p>13 Q. Bear Stearns, Fidelity, Lehman Brothers,</p> <p>14 JPMorgan Chase and Morgan Stanley --</p> <p>15 A. Right.</p> <p>16 Q. -- is that right?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. It was only those five firms?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And did you maintain a consistent</p> <p>21 portfolio of Treasury securities at each of those</p> <p>22 institutions?</p> <p>23 A. They were rarely sold unless they matured</p> <p>24 and then we repurchased, you know, different, you</p> <p>25 know, Treasury bills. Yes, I mean, for the most</p>	<p>1 required to -- you had trading ledgers that</p> <p>2 reflected what was long by the market makers or the</p> <p>3 proprietary traders in the firm's investment</p> <p>4 account. There were trading ledgers and then there</p> <p>5 were -- there's what's called a securities record,</p> <p>6 stock record.</p> <p>7 Q. Is it called a trade blotter?</p> <p>8 A. There's trade blotters, yes.</p> <p>9 Q. Is that the same thing?</p> <p>10 A. Same thing.</p> <p>11 Q. Okay. So if I -- if I --</p> <p>12 A. Trade blotters basically reflect also</p> <p>13 monies -- monies in and monies out for the payment</p> <p>14 of the securities. The trading ledgers just shows</p> <p>15 the inventory long and short, and same for the stock</p> <p>16 record. Stock record would reflect where the</p> <p>17 securities are held.</p> <p>18 Q. Okay. So I just want to get the terms.</p> <p>19 There are trade blotters?</p> <p>20 A. Trading ledgers.</p> <p>21 Q. And it's called a trading ledger?</p> <p>22 A. Correct.</p> <p>23 Q. Okay.</p> <p>24 A. You know, which would -- trading ledgers</p> <p>25 would be for the market making, proprietary trading</p>
Page 47	Page 49
<p>1 part the monies in those accounts built and became,</p> <p>2 you know, more and more up to the maximum, which</p> <p>3 was, I think, \$500 million pretty much in each</p> <p>4 account.</p> <p>5 Q. So you maintained 500 million of Treasury</p> <p>6 securities at each of those five firms?</p> <p>7 A. Pretty much, yes.</p> <p>8 Q. Okay. And then in addition you had the</p> <p>9 portfolio that was purchased directly --</p> <p>10 A. Correct.</p> <p>11 Q. -- by the 17th floor people?</p> <p>12 A. Right.</p> <p>13 Q. Now, the market making and proprietary</p> <p>14 trading people were buying and selling securities;</p> <p>15 right?</p> <p>16 A. Yes.</p> <p>17 Q. And what kind of records were kept of the</p> <p>18 securities that were held by the firm as of say</p> <p>19 month end of each month? Was there a record kept of</p> <p>20 an inventory of securities that were owned by the</p> <p>21 firm as of the end of each month?</p> <p>22 A. That the firm was long you're talking</p> <p>23 about?</p> <p>24 Q. Yes.</p> <p>25 A. Yeah. That was -- you know, you were</p>	<p>1 and the investment account, investment ledger.</p> <p>2 Q. Okay.</p> <p>3 A. And then there's what's known as a stock</p> <p>4 record, which breaks down by each security.</p> <p>5 Q. So each of those reports was done as of</p> <p>6 month end?</p> <p>7 A. Daily.</p> <p>8 Q. They were done daily?</p> <p>9 A. The reports were effected daily.</p> <p>10 Q. Okay. And did you -- through</p> <p>11 December 11th, 2008 did you maintain those records?</p> <p>12 A. Yes.</p> <p>13 Q. So they should have been there for the</p> <p>14 Trustee when he took over?</p> <p>15 A. They would be, yeah.</p> <p>16 Q. Okay. And were they all electronic records</p> <p>17 or were they paper records?</p> <p>18 A. No. They were -- well, they were all done</p> <p>19 through computers.</p> <p>20 Q. Okay. Who was responsible within the firm</p> <p>21 for generating these reports?</p> <p>22 A. Well, depends upon, you know, where they</p> <p>23 were executed. Basically, Dan Bonventry was the</p> <p>24 operations director, so he had the final</p> <p>25 responsibility. The records themselves were</p>

13 (Pages 46 - 49)

CONFIDENTIAL

<p style="text-align: right;">Page 50</p> <p>1 generated by the systems people. And depending upon 2 whether it was generated by the Stratus system, 3 which handled basically all the -- all the market 4 making, proprietary trading side of the firm, or 5 whether it was done by the investment advisory side, 6 that would have been through the AS/400. 7 Q. Okay. But the investment advisory side 8 would show -- would it show securities that actually 9 hadn't been purchased? In other words, the split 10 strike securities that weren't purchased, would 11 they -- would that be listed on that report? 12 A. That's correct. 13 Q. Okay. So that's the trading ledger? 14 A. Right. 15 Q. Okay. So -- 16 A. It would be -- it would be the customer 17 ledger. There's a customer ledger. 18 Q. There's a customer ledger. So if I wanted 19 to get an accurate picture of what securities the 20 firm actually held as of any given day, what would 21 be the best document to look at? 22 A. You would have to look at the -- the 23 trading ledgers. 24 Q. The trading ledgers. Okay. Now, at 25 JPMorgan Chase did you have an account or accounts</p>	<p style="text-align: right;">Page 52</p> <p>1 Exhibit 16 a JPMorgan Chase account statement for 2 the 703 account dated February 2001. 3 MR. GOLDMAN: I want to clear something up 4 just so we know where they are. 5 MS. CHAITMAN: Yeah. 6 MR. GOLDMAN: The trading ledgers or 7 customer accounts that we were talking about that 8 you were just being asked about -- 9 THE WITNESS: I don't understand the 10 question. 11 MR. GOLDMAN: I just want to ask you some 12 questions about where you could look at the end of 13 the month to see what was held by the company. 14 THE WITNESS: Right. 15 MR. GOLDMAN: Okay. Were those 16 electronically maintained? 17 THE WITNESS: Yes. 18 MR. GOLDMAN: Okay. 19 MR. SHEEHAN: That's all right. 20 (Customers Exhibit Number 16 was marked 21 for identification.) 22 Q. (By Ms. Chaitman) Bernie, do you recognize 23 this as a 703 account statement? 24 A. Yes. 25 Q. And if you'd turn to page four of</p>
<p style="text-align: right;">Page 51</p> <p>1 other than the 703 account? 2 A. Yeah. They had what they called a 3 controlled disbursements account, which most 4 brokerage firms maintain, so that the money was only 5 transferred -- it was part of the 703 account, but 6 it was so that they didn't take the money out of the 7 account until the checks would hit from the checks 8 that you issued it to. So it was like a flow of 9 funds account. 10 Q. Was there a 509 account? Do you remember 11 that? 12 A. I don't remember the number. 13 Q. You don't remember. Okay. 14 A. I mean, it was related to the 703 account. 15 MS. CHAITMAN: Okay. 16 MR. GOLDMAN: I'm going to direct this to 17 the reporter. Do you need a break? Okay. 18 MR. SHEEHAN: I could use a bio break in 19 about five minutes. 20 THE WITNESS: A what break? 21 MR. SHEEHAN: Bio break. 22 THE WITNESS: Bio break? 23 MR. SHEEHAN: Men's room. 24 THE WITNESS: Oh, okay. 25 MS. CHAITMAN: I'm going to mark as</p>	<p style="text-align: right;">Page 53</p> <p>1 thirty-two? 2 A. Four of thirty-two? 3 MS. CHAITMAN: Yeah. 4 MS. FEIN: Is that the last Bates? It's 5 777; is that right? 6 MS. CHAITMAN: Yes. 7 THE WITNESS: Uh-huh. 8 Q. (By Ms. Chaitman) If you look at the entry 9 on the 1st of February for \$55 million and it says 10 debit memorandum, reference purchase of ticket 11 number. Do you see that? It's down here, 55 12 million? 13 A. Yeah, okay. Uh-huh. 14 Q. Do you know what that is? 15 A. It's a debit, so I'm assuming it's -- I'm 16 assuming it's a check. 17 Q. Were you investing through JPMorgan Chase 18 funds that you had on account? 19 A. Purchase of -- I'm not sure what the 20 question is. 21 Q. Were you -- that \$55 million, were you 22 instructing Chase to invest that money in some 23 interest earning security? 24 A. Oh, they -- we must have, but they -- I 25 don't know if that was a sweep account. It was 55</p>

14 (Pages 50 - 53)

CONFIDENTIAL

<p style="text-align: right;">Page 54</p> <p>1 million. What did they purchase? I can't tell from 2 here. 3 Q. Well, you would have to look at the ticket, 4 001478. 5 A. Well, basically they wouldn't purchase 6 anything unless we instructed them to do it, but 7 they had -- all banks have what they call a sweep 8 account, you know, where they swept the money that 9 was cash that was in an account, they put it into a 10 financial instrument so that it was an interest 11 bearing account. 12 Q. Okay. And would you tell them what to 13 invest in it? 14 A. No. They would do that themselves. 15 Q. Okay. If you'd just look up a little bit, 16 there's a \$13 million entry on February 1st? 17 A. Right. 18 Q. And it says -- 19 A. Nassau. 20 Q. -- Nassau deposit taken? 21 A. Right. 22 Q. Attention, Tony Tiletnick? 23 A. Right. 24 Q. And it says to establish your deposit for 25 purchase or sale of Chemical commercial paper?</p>	<p style="text-align: right;">Page 56</p> <p>1 A. No. They would have -- they would do that. 2 You know, well, I mean, Tony would tell them -- you 3 know, Tony knew that they were investing it, but 4 they were -- he, obviously, would have had a 5 conversation with someone at the bank because at one 6 point we told them not to use -- that we didn't want 7 money going into Nassau because it was a -- it 8 wasn't -- there was concern that, you know, 9 commercial paper that was not, you know, in the U.S. 10 was more at risk. Turned out never to be a problem, 11 but it was an issue at one point. 12 Q. So where -- if I look at page nine of 13 thirty-two, let me show you which one that is. 14 There's a hundred million dollar debit memorandum on 15 February 5th. Do you see that? 16 A. Uh-huh. 17 Q. It's Bates number 1458787. 18 A. Right, uh-huh. 19 MS. FEIN: Thanks. 20 MR. SHEEHAN: Yeah. 21 Q. (By Ms. Chaitman) So do you know what that 22 would have been purchasing? 23 A. It would have -- if it's not a -- it, 24 obviously, must have been a financial instrument. 25 Whether it would be a CD or whether it be a</p>
<p style="text-align: right;">Page 55</p> <p>1 A. Commercial paper, right. 2 Q. Right. Do you see that? 3 A. Yes. 4 Q. Who was Tony Tiletnick? 5 A. He was the -- around the cashiering 6 department. 7 Q. Was he responsible for dealing with 8 JPMorgan Chase? 9 A. Yes, uh-huh. 10 Q. Was he responsible to make sure that the 11 money was invested so that it was earning money? 12 A. Yes. 13 Q. Okay. So was it your general practice to 14 make sure that the money in the 703 account was 15 always invested in securities so that it was earning 16 money? 17 A. Yes. We would never keep it just in cash. 18 That's what that -- that's why I'm referring to a 19 sweep account. They would sweep their money into an 20 interest bearing account. 21 Q. Okay. But if it's Chemical commercial 22 paper -- 23 A. Right. 24 Q. -- was that -- would that have had to be a 25 specific instruction?</p>	<p style="text-align: right;">Page 57</p> <p>1 Treasury, I can't tell. 2 Q. Okay. Did Tony Tiletnick consult with you 3 on a daily basis -- 4 A. No. 5 Q. -- or did he have authority to make these 6 decisions? 7 A. No. He had authority to do it himself. 8 Q. And in essence what were his instructions? 9 A. He was in charge of paying securities, you 10 know, and settling up with the clearing houses. 11 Q. But in terms of the investment of deposits 12 that were in the 703 account? 13 A. He would put whatever money that wasn't 14 being -- he typically wouldn't buy treasuries 15 himself. He was not someone that would normally buy 16 treasuries. He would basically be involved with 17 purchasing financial instruments like CDs or 18 treasuries for the sweep account. They weren't 19 typically large amounts. I mean by large amounts, 20 they weren't billions of dollars. 21 MS. CHAITMAN: Okay. All right. You want 22 to take a break? 23 MR. SHEEHAN: Sure. 24 THE VIDEOGRAPHER: Going off the record. 25 This ends disc number one. The time is 10:20 a.m.</p>

15 (Pages 54 - 57)



CONFIDENTIAL

Page 58	Page 60
<p>1 (A recess was taken and Customers Exhibit 2 Number 17 was marked for identification.) 3 THE VIDEOGRAPHER: Back on the record. 4 This begins disc number two. The time is 10:35 a.m. 5 Q. (By Ms. Chaitman) Okay. I've marked as 6 Exhibit 17 a June 2001 statement for the 703 7 account. 8 THE VIDEOGRAPHER: Ms. Chaitman, your 9 microphone. 10 MS. CHAITMAN: It's on. 11 THE VIDEOGRAPHER: Okay. Raise it up 12 higher. It's being covered. 13 Q. (By Ms. Chaitman) And I'm going to just 14 take a look at page seven of forty-four. Mr. 15 Madoff -- 16 MR. SHEEHAN: What's the Bates number? 17 MS. CHAITMAN: The Bates number is -- it 18 ends -- 19 MR. SHEEHAN: Oh, we have it, seven of 20 forty-four. I'm sorry. 21 MS. CHAITMAN: Sorry. 22 MR. SHEEHAN: Okay. Go ahead. 23 Q. (By Ms. Chaitman) If you look at -- 24 there's on June 4th at the bottom of the page, 25 there's a \$50 million debit?</p>	<p>1 A. Yes. 2 (Customers Exhibit Number 18 was marked 3 for identification.) 4 Q. (By Ms. Chaitman) I'm marking as 5 Exhibit 18 a 703 account statement for October 2002. 6 And Mr. Madoff, I'm going to open this to Bates 7 number 576, which is page eight of fifty-five. Mr. 8 Madoff, we're looking at a statement for 9 October 2002. 10 And if we look at the entry on 11 October 1st, there's a \$279 million entry for -- 12 it's a debit for the purchase of slash sale of JP 13 Morgan commercial paper -- 14 A. Right. 15 Q. -- is that right? 16 A. Uh-huh. 17 Q. And, again, was this done on -- by Tony 18 Tiletnick under your instructions? 19 A. Correct, yes, yes. 20 Q. Okay. Now, were there times of the year 21 when you tended to have more cash to invest than 22 others or was this a general? 23 A. No, no. It was just -- was just a normal 24 flow of funds. 25 (Customers Exhibit Number 19 was marked</p>
Page 59	Page 61
<p>1 A. Uh-huh. 2 Q. And it says purchase of slash sale of 3 JPMorgan Chase. Is that commercial paper? 4 A. Yes. 5 Q. And then reference purchase of Chemical 6 commercial paper? 7 A. Uh-huh. 8 Q. Okay. And then above that there's a 9 \$35 million debit memorandum for purchase of ticket 10 and then it's redacted? 11 A. Uh-huh. 12 Q. Okay. And then above that it's 13 12-and-a-half million and it says Nassau deposit 14 taken account? 15 A. Right. 16 Q. Can you describe what these are? 17 A. Those are just financial instruments that 18 are invested so that the money is not just sitting 19 there not earning any interest overnight. 20 Q. Okay, okay. And, again, was Tony Tiletnick 21 authorized to do this on a daily basis? 22 A. Yes. 23 Q. Okay. And is it fair to say that the goal 24 was to earn money on the investment advisory 25 customers' money?</p>	<p>1 for identification.) 2 Q. (By Ms. Chaitman) Okay. We'll go through 3 a few more of these just because they cover 4 different periods. This is -- will be Exhibit 19 5 and this covers the period of November -- of 6 December 2003. And if you could look at page 41 of 7 65? Let me open it up for you. 8 A. Uh-huh. 9 Q. There are two entries for December 22nd 10 where \$50 million -- 11 A. Right. 12 Q. -- is being invested; is that right? 13 A. Yes. 14 MS. CHAITMAN: Okay. I'm going to mark as 15 Exhibit 20 the statement for December 2004. 16 (Customers Exhibit Number 20 was marked 17 for identification.) 18 MS. FEIN: Thanks. 19 Q. (By Ms. Chaitman) Some of them I have -- I 20 don't know why some of them I have four and some of 21 them I don't, but if you look at page 35 of 63, 22 which bears Bates stamp number 1486? Now, this is 23 -- this is December of 2004 and do you see that 24 there's a \$30 million -- 25 A. Right.</p>

16 (Pages 58 - 61)

CONFIDENTIAL

Page 62	Page 64
<p>1 Q. -- Nassau deposit ticket?</p> <p>2 A. Uh-huh.</p> <p>3 Q. And then there's a \$90 million purchase?</p> <p>4 A. Right.</p> <p>5 Q. Is it fair to say that those are again --</p> <p>6 A. Uh-huh.</p> <p>7 Q. -- investments?</p> <p>8 A. Yes.</p> <p>9 Q. So that the investment advisory customers</p> <p>10 were earning money on their money?</p> <p>11 A. Uh-huh.</p> <p>12 Q. And can you explain what the Nassau deposit</p> <p>13 is?</p> <p>14 A. It's a CD, commercial paper of the -- I</p> <p>15 don't know how to describe it to you, but it's no</p> <p>16 different than JP Morgan. It's their branch in</p> <p>17 Nassau.</p> <p>18 MS. CHAITMAN: Okay, okay. I've just got</p> <p>19 two more of these. I'm marking as Exhibit 21 a</p> <p>20 June 2007 statement from JPMorgan Chase.</p> <p>21 (Customers Exhibit Number 21 was marked</p> <p>22 for identification.)</p> <p>23 MS. FEIN: Thank you.</p> <p>24 Q. (By Ms. Chaitman) And if you look on page</p> <p>25 16 of 66 which bears Bates numbers 3654, this has an</p>	<p>1 these investments?</p> <p>2 A. I don't -- he died at one point. It might</p> <p>3 have been his brother, Walter Tiletnick, took over</p> <p>4 his job at one point. I think in 2007 he was</p> <p>5 already -- he had already died.</p> <p>6 MS. CHAITMAN: Okay, okay.</p> <p>7 MR. GOLDMAN: I didn't know whether you</p> <p>8 could hear with the microphone.</p> <p>9 THE WITNESS: Uh-huh.</p> <p>10 MS. CHAITMAN: I'm going to mark as</p> <p>11 Exhibit 22 a Bear Stearns statement dated April --</p> <p>12 dated August 1, 2005.</p> <p>13 MR. SHEEHAN: Twenty-three?</p> <p>14 MS. FEIN: Twenty-two.</p> <p>15 MR. SHEEHAN: Twenty-two. My fault.</p> <p>16 (Customers Exhibit Number 22 was marked</p> <p>17 for identification.)</p> <p>18 Q. (By Ms. Chaitman) Twenty-two. Can you</p> <p>19 identify this document, Mr. Madoff?</p> <p>20 A. It's Bear Stearns' account statement.</p> <p>21 Q. Did you -- what was the time period that</p> <p>22 you transacted business with Bear Stearns?</p> <p>23 A. I transacted business with Bear Stearns,</p> <p>24 you know, from the time I started my firm over the</p> <p>25 years. So it was probably the 1960s on, you know,</p>
Page 63	Page 65
<p>1 entry for 50 million on June 6th, which is AIP</p> <p>2 overnight investment?</p> <p>3 A. Uh-huh.</p> <p>4 Q. Purchase of JPMorgan Chase commercial</p> <p>5 paper?</p> <p>6 A. Right, uh-huh.</p> <p>7 Q. And then the next one is 150 million and</p> <p>8 that's -- can you explain what that is? It seems to</p> <p>9 have an interest rate of 5.1407 percent; is that</p> <p>10 right?</p> <p>11 A. Yes.</p> <p>12 Q. Can you tell what that is?</p> <p>13 A. You know, I don't know. I mean, it must be</p> <p>14 some sort of commercial paper of JP Morgan.</p> <p>15 Q. Okay. And then the next entry on June 6th</p> <p>16 is 600 million and that's invested in short-term</p> <p>17 derivatives; is that right?</p> <p>18 A. Where is that? Six hundred million?</p> <p>19 Q. Six hundred million is -- it's June 6th.</p> <p>20 A. It says JP Morgan short-term derivatives.</p> <p>21 I don't know what that is. It must be a -- you</p> <p>22 know, it must be some sort of commercial paper that</p> <p>23 is a financial instrument.</p> <p>24 Q. Okay. And, again, is it fair to say that</p> <p>25 even in 2007 it was Tony Tiletnick who had handled</p>	<p>1 through 2008.</p> <p>2 Q. What kind of business did you do with Bear</p> <p>3 Stearns?</p> <p>4 A. My market makers and proprietary traders</p> <p>5 traded with them, you know, on a regular basis. We</p> <p>6 executed trades for their customers for -- you know,</p> <p>7 we were a wholesaler, a market maker. So we did</p> <p>8 business with, you know, hundreds of brokerage</p> <p>9 firms, Bear Stearns being one of them.</p> <p>10 Q. Is it fair to say that you did billions of</p> <p>11 dollars a year in business with Bear Stearns?</p> <p>12 A. With Bear Stearns, yes, certainly. I mean,</p> <p>13 I think we probably traded a trillion dollars a year</p> <p>14 in general with Wall Street.</p> <p>15 Q. With everyone?</p> <p>16 A. Yes.</p> <p>17 Q. Now, did you have more than one account at</p> <p>18 Bear Stearns?</p> <p>19 A. No. We only had one -- well, I guess my</p> <p>20 wife had an account at Bear Stearns, you know, just</p> <p>21 a brokerage account for herself; but the firm, you</p> <p>22 know, only had -- they had Treasury -- an account</p> <p>23 where we bought Treasury bonds and then we had -- we</p> <p>24 executed trades on the exchanges through Bear</p> <p>25 Stearns because they were the clearing broker for</p>

17 (Pages 62 - 65)

CONFIDENTIAL

<p style="text-align: right;">Page 66</p> <p>1 Cohmad Securities, which is a firm that we owned. 2 We were the owners of that. 3 Q. For Cohmad? 4 A. For Cohmad. 5 Q. Okay, okay. So is this a statement for the 6 securities account because on the second page it 7 lists different securities? 8 A. Yeah, yes. It must have been -- yeah. 9 This is the securities. 10 Q. Now, why would -- I mean, these seem to 11 indicate that the transactions were sold, bought, 12 received, delivered? 13 A. Uh-huh. 14 Q. Why would you have used Bear Stearns to buy 15 securities instead of buying them yourself? 16 A. Because we're not a member of the New York 17 Stock Exchange. Bear Stearns was. So if we bought 18 an executed trade on the floor of the exchange and 19 we weren't a market maker in that security, we would 20 go through Bear Stearns. It could have been 21 probably for like proprietary traders. 22 Q. Okay. Now, you've testified that you had 23 two accounts at Bear Stearns. One was to hold the 24 Treasury securities that were purchased and one was 25 trading?</p>	<p style="text-align: right;">Page 68</p> <p>1 Stearns, that would be a firm that -- that would be 2 part of our market making or proprietary trading 3 business. 4 Q. Okay. And the second page? 5 A. The same. 6 Q. Okay. So this is the -- the second page, 7 which is Bates numbered ending in 14, says buy SEG? 8 A. Uh-huh. 9 Q. That's a stock; right? 10 A. Right. 11 Q. Okay. And then on the sell line it says 12 hold PR something, OUS. Do you know what that is? 13 A. No. 14 Q. Okay. So is this a document that would 15 have been generated by Bear Stearns or -- 16 A. Yes. This is. 17 Q. Okay, okay. If you look at page 16, which 18 -- do you recognize the handwriting on this page? 19 A. No. 20 Q. This is dated November 11th, '94 and the 21 handwritten note says open account for Madoff. Do 22 you see that? Here. Open account? 23 A. Oh, handwritten, yeah. 24 Q. Do you know what that is? 25 A. No. This looks like Miller, you know,</p>
<p style="text-align: right;">Page 67</p> <p>1 A. It would have been for proprietary and 2 market making trading activity. 3 Q. Okay, okay. So if I wanted to get the 4 evidence of the Treasury securities that were 5 purchased with the 703 account money, I would have 6 to get the statements relating to the Treasury 7 securities? 8 A. Correct. 9 Q. Okay. And did you maintain those records? 10 A. Yeah. They would have been at the firm, 11 yeah. 12 (Customers Exhibit Number 23 was marked 13 for identification.) 14 Q. (By Ms. Chaitman) Okay. I'm going to mark 15 as Exhibit 23 a document which was produced by the 16 Trustee. Now, this document consists of a number of 17 different pages. And if you would, Mr. Madoff, I'd 18 like you to explain to me to the best of your 19 ability what each of these pages represents. 20 A. Well, the first page is -- is an account 21 for Cohmad Securities, which is an account -- which 22 is a firm that we used to execute certain trades for 23 Bear Stearns. If it was a -- if it was what's 24 called a dot trade, a trade that they had a dot 25 machine that went directly down the floor to Bear</p>	<p style="text-align: right;">Page 69</p> <p>1 Tabak and Hirsch. It probably is probably an option 2 account. 3 Q. Were they clients of yours? 4 A. No. They must have been -- this isn't Bear 5 Stearns. This is the -- they're another 6 broker-dealer -- 7 Q. Okay. 8 A. -- that we must have done. It's an option 9 account -- 10 Q. Okay. 11 A. -- that was part of our hedging, probably 12 our proprietary trading department. 13 Q. If you look at the third to the last page 14 of this collection of documents -- 15 A. Uh-huh. 16 Q. -- this is dated January 30th, 1985 and it 17 seems to -- it says please install a restricted 18 centrex line to existing Turret equipment at Bernard 19 Madoff. Do you have any idea what that was about? 20 A. No. It's the communications department. 21 So it must be, you know, one of numerous, you know, 22 systems lines that we had to -- you know, we had 23 hundreds of these types of lines to different 24 brokerage firms so that we could route orders 25 directly through them for our market making and</p>

18 (Pages 66 - 69)

CONFIDENTIAL

Page 70	Page 72
<p>1 proprietary trading. 2 (Customers Exhibit Number 24 was marked 3 for identification.) 4 Q. (By Ms. Chaitman) Okay. I'm going to mark 5 as Exhibit 24 a statement of account, and I'm 6 wondering if you can identify that. It bears a 7 Bates number MS 236. Is this a Morgan Stanley 8 statement? You can -- 9 A. I'm trying. Everything seems to be 10 redacted. I don't know. 11 Q. Right. I believe that the MS means it was 12 produced to the Trustee by Morgan Stanley. 13 A. Okay. It probably is because it's Treasury 14 bills. 15 MR. GOLDMAN: I think it is because if you 16 look on the last page, they have a note about 17 retirement accounts and review with your Morgan 18 Stanley financial advisor. It's unlikely one bank 19 is soliciting for another bank, so I think you can 20 conclude it's a Morgan Stanley statement. 21 THE WITNESS: Uh-huh. 22 Q. (By Ms. Chaitman) So am I correct that 23 this is showing that you had one-and-a-half million 24 dollars in income from this account as of March 8th, 25 2003? Am I reading that correctly?</p>	<p>1 identification.) 2 Q. (By Ms. Chaitman) Okay. I'm going to mark 3 as Exhibit 25 a document which is a JPMorgan Chase 4 position summary. So Mr. Madoff, did you have a 5 separate account at JPMorgan Chase which held the 6 Treasury bills for the -- 7 A. Yes. 8 Q. -- 703 account customers? 9 A. Uh-huh. 10 Q. Can you identify this document? Is it in a 11 form that you've seen before? 12 A. I don't know what -- I mean, I typically 13 wouldn't look at these statements, so looks to me 14 just like a -- you know, a typical Treasury bond 15 account where we bought treasuries. It lists all 16 the activity as of April 2008. 17 Q. Okay. So if you had at JPMorgan Chase, you 18 had about 2.8 billion, right, in Treasury 19 securities? 20 A. Let me see. Yes. 21 Q. And then you maintained about 500 million 22 at each of those other four institutions? 23 A. Right. 24 Q. So that would have been 2.8 and then it 25 would have been 4.8; right?</p>
Page 71	Page 73
<p>1 A. What page are you on? 2 Q. On the first page. 3 A. On the first page? 4 Q. It looks like -- it looks like Morgan 5 Stanley is holding Treasury bills; right? 6 A. Uh-huh, right. 7 Q. Okay. And then it has a liquid asset fund 8 of about 9.7 billion. Do you see that? 9 A. Nine point seven billion? No. 10 Q. No, million. Excuse me. 11 A. Nine million, right. 12 Q. Excuse me, excuse me. Yes, of course. 13 A. Yeah. Right. A million five hundred 14 thousand dollars was the yearly income. 15 Q. Okay. To the best of your recollection did 16 you have more than one account at Morgan Stanley? 17 A. Not for treasuries. We would have had only 18 one account. 19 Q. One account for treasuries? 20 A. Right. 21 Q. But you would have had accounts for 22 something -- 23 A. Well, we also executed trades for Morgan 24 Stanley. 25 (Customer Exhibit Number 25 was marked for</p>	<p>1 A. Right. 2 Q. And then you had Treasury securities that 3 were purchased directly by -- 4 A. Right. 5 Q. -- Frank DiPascali? 6 A. Right. It would be at DTC. Those would 7 have been -- no. Those would have been by -- those 8 would have been bought by Frank. 9 (Customers Exhibit Number 26 was marked 10 for identification.) 11 Q. (By Ms. Chaitman) Okay. I'm going to mark 12 as Exhibit 26 what I believe is a Fidelity 13 statement. Can you identify this? 14 A. Uh-huh. 15 Q. Is it a Fidelity statement? 16 A. Yes. 17 Q. So they use the trade name Premium 18 Services? 19 A. Uh-huh. 20 Q. And this statement is dated January 31, 21 1999. So what does the statement show that Fidelity 22 was holding in U.S. Treasury securities? 23 A. Looks like 205 million. 24 Q. Okay. And these were bearing interest of 25 5.25 percent and 5.375 percent?</p>

19 (Pages 70 - 73)

CONFIDENTIAL

Page 74	Page 76
<p>1 A. Right, uh-huh.</p> <p>2 Q. And was this purchased with money from the</p> <p>3 703 account?</p> <p>4 A. Yes.</p> <p>5 (Customers Exhibit Number 27 was marked</p> <p>6 for identification.)</p> <p>7 Q. (By Ms. Chaitman) I've marked as</p> <p>8 Exhibit 27 an August 31, 1991 statement of</p> <p>9 Clothmasters, Inc. Mr. Madoff, was Clothmasters an</p> <p>10 investment advisory customer?</p> <p>11 A. I would assume so, yes.</p> <p>12 Q. Okay. And this statement is dated August</p> <p>13 31, 1991. Can you tell what trading strategy this</p> <p>14 statement reflects?</p> <p>15 MR. GOLDMAN: I'm going to step out for a</p> <p>16 second.</p> <p>17 MS. CHAITMAN: Sure.</p> <p>18 THE WITNESS: This looks like a -- it</p> <p>19 looks like a split strike trade via equity. It</p> <p>20 looks like a basket of securities that were part of</p> <p>21 the split strike transaction.</p> <p>22 Q. (By Ms. Chaitman) Okay. And as of</p> <p>23 August 31, 1991 were you actually purchasing the</p> <p>24 securities?</p> <p>25 A. Yes.</p>	<p>1 THE WITNESS: All right. I'm okay for</p> <p>2 now.</p> <p>3 MS. CHAITMAN: Do you want to? Do you</p> <p>4 want to?</p> <p>5 THE WITNESS: No. It's all right.</p> <p>6 MS. CHAITMAN: You sure?</p> <p>7 MR. SHEEHAN: Whenever you're ready, just</p> <p>8 tell us.</p> <p>9 THE WITNESS: Okay.</p> <p>10 MR. SHEEHAN: We're not going anywhere.</p> <p>11 THE WITNESS: I don't know how long she's</p> <p>12 going to be with this. What are you doing?</p> <p>13 MS. CHAITMAN: Well, I --</p> <p>14 MR. SHEEHAN: I think we're looking at all</p> <p>15 day.</p> <p>16 CHAITMAN: No, but if you want -- do you</p> <p>17 want to take a break? Is this when you normally eat</p> <p>18 lunch? Why don't we --</p> <p>19 MR. SHEEHAN: Why don't we just do it?</p> <p>20 MS. CHAITMAN: Yeah.</p> <p>21 THE WITNESS: Okay.</p> <p>22 THE VIDEOGRAPHER: Going off the record.</p> <p>23 The time is 11:09 a.m.</p> <p>24 (A luncheon recess was taken.)</p> <p>25 THE VIDEOGRAPHER: Back on the record.</p>
Page 75	Page 77
<p>1 (Customers Exhibit Number 28 was marked</p> <p>2 for identification.)</p> <p>3 Q. (By Ms. Chaitman) I'm marking as</p> <p>4 Exhibit 28 a document which is called Account</p> <p>5 Canada. Can you tell me what this is?</p> <p>6 A. Looks like it says Canadian dollars, so</p> <p>7 this must have been part of our proprietary trading,</p> <p>8 I think. I doubt whether this is -- I doubt whether</p> <p>9 this is a customer.</p> <p>10 Q. So this is a record of investments that the</p> <p>11 firm made in Canadian dollars?</p> <p>12 A. Right.</p> <p>13 Q. Is this a report that was regularly</p> <p>14 prepared by your firm?</p> <p>15 A. I don't know what this is. I mean, you</p> <p>16 know, I'm not familiar with this, so, you know --</p> <p>17 Q. Okay. I don't want you to guess if --</p> <p>18 A. No. I don't know.</p> <p>19 MS. CHAITMAN: Okay.</p> <p>20 MR. GOLDMAN: Do you need to eat?</p> <p>21 THE WITNESS: Yeah. Whenever you're --</p> <p>22 MR. GOLDMAN: They have your food outside.</p> <p>23 THE WITNESS: Huh?</p> <p>24 MR. GOLDMAN: I checked. They have your</p> <p>25 food outside.</p>	<p>1 The time is 11:29 a.m.</p> <p>2 Q. (By Ms. Chaitman) Just to review, Mr.</p> <p>3 Madoff, if I wanted to get a full picture of the</p> <p>4 Treasury securities that were purchased with money</p> <p>5 from the 703 account as of any point in time from</p> <p>6 say 1994 on when you say that the split strike,</p> <p>7 that's when you stopped writing securities for the</p> <p>8 customers, I would have to get the statements from</p> <p>9 Bear Stearns; right?</p> <p>10 A. (Witness nods head.)</p> <p>11 Q. The statements from Morgan Stanley?</p> <p>12 A. Right.</p> <p>13 Q. The statements from Fidelity?</p> <p>14 A. Right.</p> <p>15 Q. The statements from Lehman Brothers?</p> <p>16 A. Right.</p> <p>17 Q. And I would have to get the JPMorgan Chase</p> <p>18 statements like the one we looked at, which was the</p> <p>19 account that held the Treasury securities?</p> <p>20 A. Correct.</p> <p>21 Q. Okay. And if I wanted to get a complete</p> <p>22 picture of the securities that your firm held that</p> <p>23 were long positions that you actually held, I would</p> <p>24 have to look at the DTC records?</p> <p>25 A. Correct.</p>

20 (Pages 74 - 77)

CONFIDENTIAL

<p style="text-align: right;">Page 78</p> <p>1 Q. I'd have to look at -- were there other 2 places that you held securities? Would I have to 3 look at, say, your account at Bear Stearns? 4 A. You would have to look at the banks if 5 there were -- if there were bank loans. 6 Q. Because if you borrowed from a bank, you 7 would have pledged the securities to the bank? 8 A. Right. Typically they would be held at 9 DTC, but they would be in the bank's account at DTC. 10 They would be journaled over to the bank. So you'd 11 have to look at the DTC -- you'd have look at the -- 12 you would have to get that from the bank themselves 13 because DTC would not give them to you. 14 Q. What banks did you borrow money from where 15 you pledged the securities to the banks? 16 A. It could be JP Morgan. It could be Bank of 17 New York, you know, depending on what period; but if 18 you were looking at 2008 or 2000s, it would be 19 typically Bank of New York, M&amp;T, it could be JP 20 Morgan. I think that's -- those are the banks that 21 we used at that time. 22 Q. And if it's earlier? 23 A. You'd have to look at any one of the -- you 24 probably couldn't get them, you know, but it would 25 be the banks that I mentioned to you.</p>	<p style="text-align: right;">Page 80</p> <p>1 A. One of the partners at Price Waterhouse. 2 Q. Do you remember who? 3 A. Ed Kostin, Edward Kostin. 4 MR. GOLDMAN: Could you spell the name? 5 THE WITNESS: K-o-s-t-i-n. He's deceased 6 now. 7 Q. (By Ms. Chaitman) And, again, I don't want 8 you to mention any names, but were the hold harmless 9 agreements signed by members of all the four 10 families? 11 A. Yes. 12 Q. And what was the total amount of the debt 13 that the hold harmless agreements obligated the four 14 families together to pay you? 15 A. Well, it varied depending upon the 16 fluctuation of the -- of the securities because the 17 hold harmless agreements basically stated that they 18 were holding me harmless for any loss involved in 19 the naked part of their securities because of the 20 short positions that had been maintained. So it 21 could have -- probably was a maximum of probably I 22 would say at one point probably \$9 million -- 23 \$9 billion. 24 Q. Okay. As of December 11th, 2008 do you 25 have any sense of how much it was?</p>
<p style="text-align: right;">Page 79</p> <p>1 Q. All the clearing accounts? 2 A. Right, right. 3 Q. So if I wanted -- let's say I'm talking 4 about 2003. 5 A. Right. 6 Q. I would have -- in order to determine what 7 securities were held by your firm, I would have to 8 look at the DTC records for each of the banks that 9 you listed before? 10 A. Right. 11 Q. Plus your own DTC -- 12 A. Right. 13 Q. -- correct? And would that give me a 14 complete picture of all the securities you owned as 15 of a given point in time? 16 A. Uh-huh. 17 Q. Yes? 18 A. Yes. 19 Q. Now, again, I don't want you to mention any 20 individual names, but you testified previously that 21 the four families entered into hold harmless 22 agreements with you? 23 A. Right. 24 Q. Do you recall who was involved in drafting 25 those hold harmless agreements?</p>	<p style="text-align: right;">Page 81</p> <p>1 A. As of when? 2 Q. December 11th, 2008. 3 A. I couldn't give you an exact figure. You 4 know, the -- 5 Q. Don't mention any names. 6 A. Not counting the 6 billion, there was one 7 debit balance of 6.3 billion. 8 Q. Okay. So one person had a -- was that a 9 margin loan? 10 A. Yes. 11 Q. So ones customer had a margin loan of six 12 billion? 13 A. Right, right. 14 Q. And then -- 15 A. Then I would say the others were probably 16 -- there was probably an additional \$5 billion in 17 exposure that they caused me. 18 Q. Okay. So it was approximately \$11 billion 19 at the time you confessed? 20 A. Approximately, yes. 21 Q. Okay. Now, Mr. Madoff, you've testified 22 that the investment advisory fraud did not begin 23 until either late 1993 or early 1994. Are you aware 24 that David Kugel testified that the fraud began in 25 the 1970s?</p>

21 (Pages 78 - 81)

CONFIDENTIAL

<p style="text-align: right;">Page 82</p> <p>1 A. Yes.</p> <p>2 Q. Mr. Kugel testified at the Bonventry trial</p> <p>3 that in the 1970s he gave Annette Bongiorno</p> <p>4 arbitrage trades for the accounts of Stanley, Chase</p> <p>5 and for Avellino and Bienes. Were you defrauding</p> <p>6 Chase and Avellino and Bienes in the 1970s?</p> <p>7 A. No.</p> <p>8 Q. Did you read Mr. Kugel's testimony?</p> <p>9 A. Yes.</p> <p>10 Q. Do you think it's accurate?</p> <p>11 A. No.</p> <p>12 Q. Can you explain why?</p> <p>13 A. First of all, I think that --</p> <p>14 THE VIDEOGRAPHER: Microphone, microphone,</p> <p>15 microphone.</p> <p>16 MS. CHAITMAN: You took care of the</p> <p>17 microphone.</p> <p>18 MR. GOLDMAN: Want me to remove the</p> <p>19 microphone? Sorry.</p> <p>20 MS. CHAITMAN: I'm sorry, Mr. Madoff.</p> <p>21 THE WITNESS: I guess the best way to</p> <p>22 describe -- from what I've been able to piece</p> <p>23 together from the -- what I've read from the</p> <p>24 testimony and what I've been told and what I've seen</p> <p>25 is that this so-called smoking gun I would refer to</p>	<p style="text-align: right;">Page 84</p> <p>1 for the customers in? All right. So he would pick</p> <p>2 out a security that we were trading and he would</p> <p>3 give him the correct formula. Once they got that</p> <p>4 formula, that scrap of paper, the next step would be</p> <p>5 to go and search our trading records, which would be</p> <p>6 what the market maker or the firm's investment</p> <p>7 account bought and sold over a period of let's say</p> <p>8 for four days.</p> <p>9 And then they would -- he would by running</p> <p>10 a run of what we bought and sold, then Annette or</p> <p>11 Jodi, not David, you know, Annette or Jodi would</p> <p>12 look through the trading records and pick out a</p> <p>13 certain number of shares in stock and they would</p> <p>14 come up with an average price and the appropriate</p> <p>15 number of shares.</p> <p>16 All right. So this David Kugel had no</p> <p>17 access to any of those records. He wouldn't be able</p> <p>18 to do that. He was just giving them -- he was just</p> <p>19 giving them what the correct formula would be.</p> <p>20 So by -- for some reason the Trustee, all</p> <p>21 right, because he had this piece of paper which they</p> <p>22 showed me when they first came down here years ago</p> <p>23 and asked me what it was, I told them it was a</p> <p>24 formula, exactly what I just said. They determined</p> <p>25 from that that David was generating the trade and</p>
<p style="text-align: right;">Page 83</p> <p>1 it is that David Kugel, who is one of my convertible</p> <p>2 bond traders, used to -- at our -- at my request</p> <p>3 used to generate a convertible bond formula that he</p> <p>4 would give to either Annette Bongiorno or Jodi, all</p> <p>5 right, that would lay out what the proper conversion</p> <p>6 ratio was on a particular convertible security.</p> <p>7 In other words, it was a formula that he</p> <p>8 would write on a scrap of paper that would say MCI</p> <p>9 convertible bond would be bought 100 bonds, you</p> <p>10 would short let's say a thousand shares of stock at</p> <p>11 a certain price. And they would take that formula</p> <p>12 and they would use that when they were going to now</p> <p>13 generate a trade for a client.</p> <p>14 All right. Now, that was so that they --</p> <p>15 because they were not traders, they were not</p> <p>16 familiar with what the proper conversion ratios</p> <p>17 were. All right. So typically what would happen,</p> <p>18 the step used to be if Annette would come to them</p> <p>19 with a convertible bond and say okay, I have a</p> <p>20 million dollars worth of convertible bonds, that</p> <p>21 typically would be a million because we traded in</p> <p>22 much larger numbers.</p> <p>23 So she would say there's \$10 million</p> <p>24 available to be invested in convertible securities.</p> <p>25 What securities would you recommend that would put</p>	<p style="text-align: right;">Page 85</p> <p>1 that we weren't actually buying. He was just making</p> <p>2 up the trade, which I laughed at at the time because</p> <p>3 it didn't make any sense, you know, for him to do</p> <p>4 that. He couldn't possibly generate the trade</p> <p>5 because he had no access to the records to pick that</p> <p>6 out. He was just looking at one trade.</p> <p>7 That is why -- and that was why Dubinsky,</p> <p>8 you know, you know, did not have the -- couldn't</p> <p>9 match up the number of shares or the price properly.</p> <p>10 So David's testimony -- and I don't know why he</p> <p>11 would even say that. I don't think that he would --</p> <p>12 if he believed that he was actually generating a</p> <p>13 trade, I can't believe that he would even think that</p> <p>14 he was generating a trade because he knows that.</p> <p>15 I mean, it just didn't make any sense. So</p> <p>16 either he was -- either the Trustee or whoever it</p> <p>17 was that was determining that, you know, just didn't</p> <p>18 understand it, which is probably the most likely</p> <p>19 situation or they were just trying to create a</p> <p>20 situation. Just doesn't make any sense.</p> <p>21 And anybody that if you call anybody in</p> <p>22 for the industry, another person that ran a trading</p> <p>23 desk that was familiar with how you did these types</p> <p>24 of transactions would tell you the same thing. I</p> <p>25 mean, it made absolutely no sense.</p>

22 (Pages 82 - 85)

CONFIDENTIAL

<p style="text-align: right;">Page 86</p> <p>1 Q. (By Ms. Chaitman) Now, when you confessed 2 you weren't in the process of negotiating a plea 3 agreement; right? 4 A. No, no. 5 Q. When David Kugel gave his testimony -- 6 A. Uh-huh. 7 Q. -- he had negotiated a plea agreement; 8 right? 9 A. From what I understand, yes. 10 Q. So he had to give the prosecutor something 11 that the prosecutor wanted; right? 12 A. I don't know. It looks like it. I mean, I 13 just -- you know, I don't think David Kugel was a -- 14 you know, a devious type of person. David Kugel was 15 not a good communicator. I mean, he was known in 16 the firm as having a very hard time telling anybody 17 anything. Nobody ever wanted to speak to David 18 Kugel. He was a very nice guy and he was actually a 19 talented trader himself, but he could not 20 communicate with anybody. 21 I mean, and so that's the only thing I can 22 think of is he didn't understand the question, he 23 got nervous. I just don't know, but it made 24 absolutely -- it made absolutely no sense, his 25 testimony.</p>	<p style="text-align: right;">Page 88</p> <p>1 client business and your proprietary trading 2 department. The -- now, when do our -- when a firm 3 like ours that is a market maker and is doing an 4 arbitrage business, whether it be split strike or 5 whether it be convertible bonds and is trading 6 baskets and options and all sorts of hedging 7 strategy, which is what our firm specialized in, 8 when you do -- when you prepare your financial 9 reports, your focus reports at the end of any month, 10 you are allowed to net all of your positions. 11 So, for example, if you have -- in our 12 firm we could have ten traders trading the same 13 security. So some traders would have long positions 14 in IBM. Some would be short positions in IBM. Some 15 would have option positions on in IBM. What you 16 have to do at the end of every month is you net all 17 the positions, the option positions, to come up with 18 a net exposure or net position. 19 So you could have, for example, one trader 20 may be long a thousand shares. Another trader is 21 long -- is short 500 shares of stock so that the net 22 would be 500 shares. All right. The person that 23 instructs -- there's one person that instructs, you 24 know, how you do all of this. Now, Irwin Lipkin 25 even before he retired was very -- was not the most</p>
<p style="text-align: right;">Page 87</p> <p>1 And another example of this was there was 2 a testimony by Irwin Lipkin, all right, about -- you 3 know, first of all, you have to understand that the 4 only one that ever saw a completed focus report in 5 our firm or that ever signed a completed focus 6 report was me. Nobody -- nobody in our firm knew 7 what the actual P&amp;L was. The traders -- and this is 8 not by accident. 9 In other words, the securities industry 10 has very strict requirements so that there's no 11 conflict of interest between market makers, the 12 trading department and so on. You're required to 13 keep your records separate. 14 The trade -- the market makers are not 15 allowed to see another market maker's, you know, 16 trading positions or P&amp;L. As a matter of fact, you 17 have to have supervisors that are different. For 18 example, my brother -- my one son was in charge of 19 the market making department. The other son was in 20 charge of the proprietary trading department. They 21 had to be separate. 22 And you couldn't have a system -- the 23 traders are not allowed to see what this other 24 trader has a position of because of what they call 25 Chinese walls between your market making, your</p>	<p style="text-align: right;">Page 89</p> <p>1 efficient person. Irwin Lipkin started with me when 2 he first came out of the Army, but as the firm grew, 3 as the firm became more and more sophisticated and 4 was trading in the old strategies, it was beyond 5 Irwin Lipkin's grasp, which was fine because he was 6 a bookkeeper. 7 He only had to know specific things. At 8 the end of each month when you had to net all these 9 different positions, Irwin Lipkin didn't do that. 10 So what would happen is if Irwin Lipkin and the 11 records that he was looking at showed a thousand 12 shares of stock but didn't -- he wouldn't know what 13 the rest of the firm's were. So somebody had to net 14 all of this out. 15 And it was a very complicated procedure 16 and each firm depending upon the type of business 17 you had had certain what they called no action 18 letters from the SEC, which told you how you could 19 -- you know, how you could handle each security. 20 And as a matter of fact, because I was the 21 chairman of the trading committee for the industry, 22 I had to work with the SEC when we formulated all of 23 these different regulations and rules. So I was 24 aware of the fact that the typical accountant or 25 lawyer, for example, would not be familiar with any</p>

23 (Pages 86 - 89)



CONFIDENTIAL

<p style="text-align: right;">Page 90</p> <p>1 of that. So I was not the least bit surprised that, 2 for example, Dubinsky's errors that he had because 3 he, obviously, was not that familiar with how -- you 4 know, how you did this. Now, it doesn't mean you 5 couldn't find out. 6 If you went -- if you got someone that 7 really was familiar with all of these things, they 8 would be able to understand that; but if you ask the 9 typical accountant because, look, I worked with 10 every major accounting firm in the country, you 11 know, over the years. So I was familiar with what 12 they did, what they understood and what they -- it's 13 not surprising. It's a typical problem in the 14 industry. 15 So David Kugel's testimony as far as I'm 16 concerned as with Annette and as with any of these 17 people in my firm, whether it be Enriqua Pitz or 18 anyone else because I read all of their depositions. 19 And, you know, none of that was really valid because 20 they were looking at only what their specific job 21 was. They didn't know what the rest -- they weren't 22 familiar with the whole picture of the firm. 23 The only ones that would know that would 24 be Dan Bonventry in my firm, who was the director of 25 all operations, or myself. It wouldn't have been</p>	<p style="text-align: right;">Page 92</p> <p>1 A. Focus reports were accurate because that 2 wouldn't have affected the focus reports anyhow. 3 The focus reports were accurate through 1992 for 4 sure. 5 Q. Through 1992? 6 A. Yes. 7 Q. Okay. So I know it's a long time ago and I 8 don't want you to say anything unless it's your best 9 recollection, but you testified earlier today that 10 you were doing the split strike trades until late 11 1993 or early 1994? 12 A. Right. 13 Q. But are you unsure of it? I mean, do 14 you -- 15 A. No. I was -- I didn't do it for all of the 16 clients, you know. That's what I said. There were 17 some clients that I did do the trades through 1993 18 for. 19 Q. Is there any way that we could determine 20 now which clients you did the trades for and which 21 ones you didn't? 22 A. No. I couldn't remember that for sure. 23 (Customers Exhibit Number 29 was marked 24 for identification.) 25 Q. (By Ms. Chaitman) Okay. I'm up to</p>
<p style="text-align: right;">Page 91</p> <p>1 David Kugel. It wouldn't have been Enriqua Pitz and 2 so on. 3 Q. Did you believe that the focus reports were 4 accurate prior to 1994 when you stopped buying the 5 split strike securities? 6 A. Yes. And you see, you're using the '94, 7 '93, '92, so I want to make sure there. I said that 8 the fraud began in '92 because that was when we 9 weren't completing all of the transactions in this 10 split strike. All right. There was some -- there 11 were some transactions in the split strike done, you 12 know, through 1993. 13 All right. But I'm not comfortable saying 14 that everything was done -- was done -- I'm 15 comfortable saying that everything was done 16 correctly, you know, prior to '92. 17 Other than the fact there was some back 18 trading of -- of customer transactions for the 19 accounts, for the four large accounts that started 20 like in 1990, that was -- because of what happened 21 was after the crash in 1987, the four big clients, 22 you know, forced me to liquidate some of their 23 positions. And that's when the hold harmless 24 agreements started. 25 Q. Okay. But --</p>	<p style="text-align: right;">Page 93</p> <p>1 Exhibit 29. I'm handing you what I've marked as 2 Exhibit 29, which is an appendix to Mr. Dubinsky's 3 report in which he lists the documents that he 4 considered. Have you seen this document before? 5 A. No. 6 Q. Now, you've testified that Mr. Dubinsky did 7 not interview you and no one on his behalf 8 interviewed you; is that right? 9 A. Yes. 10 Q. Okay. And if you look at page eight of 11 this document, it lists a number of people who have 12 been -- whose deposition transcripts Mr. Dubinsky 13 said that he read. Can you look through this list 14 and tell me if any of these people -- it begins on 15 the bottom of page eight -- 16 A. Uh-huh. 17 Q. -- and then it goes on to page nine. Can 18 you look at these names and tell me if any of these 19 people would have known how you executed the 20 convertible arbitrage trades in the 1980s? 21 A. You're looking at the depositions you're 22 saying? 23 Q. Yeah. The names of the people. Do you 24 recognize any of these people as people who had 25 knowledge about convertible arbitrage trading from</p>

24 (Pages 90 - 93)

CONFIDENTIAL

Page 94	Page 96
<p>1 the 1980s?</p> <p>2 A. None.</p> <p>3 (Customers Exhibit Number 30 was marked</p> <p>4 for identification.)</p> <p>5 Q. (By Ms. Chaitman) Okay. Now, I'd like to</p> <p>6 mark as Exhibit 30 an August 20th, 2010 letter that</p> <p>7 was written by Scott Garrett to Stephen Harbeck and</p> <p>8 then a September 7th, 2010 letter from Mr. Harbeck</p> <p>9 to Scott Garrett, which is the response. I'll just</p> <p>10 have to find the one that I marked up. Just give me</p> <p>11 one second. I should have one more of these. Let</p> <p>12 me just see.</p> <p>13 MS. FEIN: That's all right. We'll share.</p> <p>14 MR. SHEEHAN: It's all right. Go ahead.</p> <p>15 MR. GOLDMAN: This may be the marked up</p> <p>16 one.</p> <p>17 MS. CHAITMAN: Oh, yeah. Thank you.</p> <p>18 Q. (By Ms. Chaitman) Have you seen this</p> <p>19 document before?</p> <p>20 A. No.</p> <p>21 Q. If you'd be good enough to turn to page 18?</p> <p>22 And the numbers are on the top of the left-hand side</p> <p>23 of the page. The numbers are right up there.</p> <p>24 A. Uh-huh.</p> <p>25 Q. SIPC is telling Scott Garrett that you had</p>	<p>1 MS. CHAITMAN: Sure.</p> <p>2 THE WITNESS: I'm still confused as to</p> <p>3 what the question is. I don't know. Maybe it's</p> <p>4 just me right now, but I don't -- when he's talking</p> <p>5 about how many accounts, he's talking about -- what</p> <p>6 is he talking about? Customer accounts or accounts</p> <p>7 we had at other brokerage firms or what?</p> <p>8 Q. (By Ms. Chaitman) Well, the question was,</p> <p>9 and I'm reading from the bottom of page 17, if for</p> <p>10 the same period, which is --</p> <p>11 A. Right.</p> <p>12 Q. -- December 1998 through December 2008,</p> <p>13 Madoff, BLMIS or other Madoff controlled businesses</p> <p>14 had other accounts at U.S. or foreign banks or other</p> <p>15 financial institutions provide annual balance data</p> <p>16 for these accounts?</p> <p>17 A. Okay. Well, again, if he's talking about</p> <p>18 accounts that we had, you know, if he's talking</p> <p>19 about that we had -- for example, if the Union Bank</p> <p>20 in Switzerland handled an account for a hedge fund,</p> <p>21 they may have had ten hedge fund accounts because</p> <p>22 they have been the custodian for those accounts. As</p> <p>23 far as we're concerned, we never had an account with</p> <p>24 these entities. So again, it depends on how you</p> <p>25 define we have an account.</p>
Page 95	Page 97
<p>1 all together -- you had the 703 account, you had two</p> <p>2 custody accounts at JPMorgan Chase and you had an</p> <p>3 additional 127 accounts. Do you see that?</p> <p>4 A. Right.</p> <p>5 Q. Does that sound accurate to you?</p> <p>6 A. A hundred and twenty-seven accounts why?</p> <p>7 Q. Held by -- I'm reading from the top of the</p> <p>8 page. It says in addition to the Madoff 703 account</p> <p>9 and the two BLMIS custody accounts held at JPMorgan</p> <p>10 Chase as discussed in response to section two,</p> <p>11 question 1(a) above, an additional 127 accounts held</p> <p>12 by Madoff, BLMIS or other Madoff-related entities</p> <p>13 have been identified to date as a result of the</p> <p>14 investigation.</p> <p>15 A. Well, I'm not sure which accounts he's</p> <p>16 referring to when he says 127 accounts. What is</p> <p>17 that? Customer accounts or what is it?</p> <p>18 Q. Accounts in the name of your firm, either</p> <p>19 you or in the name of either you or BLMI.</p> <p>20 MR. SHEEHAN: Helen, it might be a good</p> <p>21 idea if Mr. Madoff read question to question that's</p> <p>22 being answered here, the page before.</p> <p>23 MS. CHAITMAN: Sure.</p> <p>24 MR. SHEEHAN: It might be a little bit</p> <p>25 helpful.</p>	<p>1 We trade for -- we had -- we were hooked</p> <p>2 into hundreds of other broker-dealers, whether it be</p> <p>3 Charles Schwab or Merrill Lynch or Fidelity. You</p> <p>4 know, we didn't have a -- we don't consider that we</p> <p>5 had an account there. We did business with them, so</p> <p>6 we had transactions that went through that. We were</p> <p>7 executing Charles Schwab's customers' accounts but,</p> <p>8 you know, Charles Schwab was our customer, not a</p> <p>9 customer of Charles Schwab.</p> <p>10 Q. Okay.</p> <p>11 A. So I don't know --</p> <p>12 Q. Is it fair to say that you don't believe</p> <p>13 that you, Madoff or BLMIS maintained 127 different</p> <p>14 accounts?</p> <p>15 A. No, no. Again, it depends on how you</p> <p>16 define an account. I mean, we had hundreds, you</p> <p>17 know, of accounts. We had much more than 127</p> <p>18 accounts depending upon what your definition of an</p> <p>19 account is. We did 10 percent of all the trading in</p> <p>20 the United States.</p> <p>21 So, you know, we had -- we transacted five</p> <p>22 or six hundred thousand transactions every day, you</p> <p>23 know; but as I say, if you were a customer of</p> <p>24 Fidelity or Charles Schwab, you had an account</p> <p>25 there. All right. You weren't my customer.</p>

25 (Pages 94 - 97)

CONFIDENTIAL

<p style="text-align: right;">Page 98</p> <p>1 Fidelity or Schwab was my customer. Now, they did 2 business with us, Fidelity. We don't consider that 3 we had an account with them. 4 Q. Right. 5 A. Because when we executed transactions for 6 them, those transactions went through the clearing 7 corporation. They were settled every day. We 8 didn't keep money at Fidelity. They didn't keep 9 money at our account. Those all went through the 10 clearing accounts. 11 Now, they would say that they -- they could 12 say they have an account with us because they did 13 business with us. So they would have a -- they 14 would show that -- what business they did with 15 Madoff on a particular day the same way that if you 16 were a customer of ours, Sean Jones, it would say 17 you have an account with us; but that's not what a 18 firm -- 19 Q. Right. 20 A. So I don't know exactly how they're 21 defining an account. 22 Q. Okay. If you look at the back of the 23 document and you go in one, two, three, four, five 24 -- let's see. From the back of the document six 25 pages, you see you get to this from the back of the</p>	<p style="text-align: right;">Page 100</p> <p>1 A. Uh-huh. 2 Q. One Bear Stearns account? 3 A. Right. 4 Q. One Fidelity account? 5 A. Uh-huh. 6 Q. One M&amp;T account? 7 A. Right. 8 Q. And one Morgan Stanley account? 9 A. Right. 10 Q. Okay. Now, this is captioned Madoff 11 related accounts, year-end balances and annual 12 earnings accounts with transfers to and from the 13 Madoff 703 account. Do you see that in the upper 14 left-hand corner? 15 A. Uh-huh. 16 Q. So these were -- is it fair to say that 17 these were all accounts which received transfers 18 from the 703 account? 19 A. If that's what it says, yeah. 20 Q. Well, do you recall -- I mean, you've 21 testified that Treasury securities were purchased 22 with 703 account money by Fidelity, Bear Stearns, 23 Morgan Stanley and Lehman; right? 24 A. Uh-huh. 25 Q. And Barclays is Lehman?</p>
<p style="text-align: right;">Page 99</p> <p>1 document. You've got it. 2 MR. SHEEHAN: Okay. 3 Q. (By Ms. Chaitman) You're in the wrong 4 document. 5 A. Oh, I'm in the wrong -- 6 Q. That will make it even harder. 7 A. No wonder why you people charge \$700 an 8 hour. 9 Q. Okay. Sorry to confuse you. 10 A. Uh-huh, right. 11 Q. So these are -- this lists three Bank of 12 New York accounts; right? 13 A. Right. 14 Q. One was for you and Ruth and then one was 15 just for you and one was for BLMIS; right? 16 A. Right. 17 Q. And then there's a Bankers Trust account in 18 your name? 19 A. Uh-huh. 20 Q. Was that used for the firm? 21 A. Yes. 22 Q. Okay. And there was a Barclays account? 23 A. Right. 24 Q. There were two -- actually, three Barclays 25 accounts; right?</p>	<p style="text-align: right;">Page 101</p> <p>1 A. No. Barclays is Barclays. 2 Q. Well, if you look at the entry for 3 Barclays, underneath it says Lehman? 4 MR. SHEEHAN: Could Lehman -- I'll stop. 5 THE WITNESS: Okay. I mean, Barclays he 6 use -- Madoff Securities in London cleared their 7 transactions through Barclays. 8 MS. CHAITMAN: Okay. 9 THE WITNESS: So but I don't know what 10 Lehman did with Barclays. They may have used 11 Barclays as well. 12 Q. (By Ms. Chaitman) Okay. When money was 13 transferred from the 703 account to MSIL in 14 London -- 15 A. Uh-huh. 16 Q. -- was that money used to purchase 17 securities? 18 A. It was used to purchase usually treasuries. 19 Q. From -- by MSIL? 20 A. Right. 21 Q. Okay. And were those treasuries also held 22 for the benefit of the investment advisory 23 customers? 24 A. Probably. 25 Q. Do you remember approximately how much MSI</p>

26 (Pages 98 - 101)

CONFIDENTIAL

Page 102	Page 104
<p>1 held in Treasury securities?</p> <p>2 A. No.</p> <p>3 Q. And for us to determine that, we'd have to</p> <p>4 get the Barclays Bank statements, is that -- for the</p> <p>5 Treasury account?</p> <p>6 A. Correct.</p> <p>7 Q. If you look on the next page, which is page</p> <p>8 19 -- let me help you. Under paragraph two, what</p> <p>9 appears in bold is the question that was asked by --</p> <p>10 A. Right.</p> <p>11 Q. -- Congressman Garrett. It said during the</p> <p>12 period 1992-2008 when Madoff was actively pursuing</p> <p>13 his Ponzi fraud, he was engaged in market making and</p> <p>14 proprietary trading. For each of these years</p> <p>15 provide data on trading volumes and the annual gross</p> <p>16 and net revenues from this trading activity.</p> <p>17 And then the answer is a table, which SIPC</p> <p>18 says the table below includes annual revenue, net</p> <p>19 income and trading volumes as reported in the focus</p> <p>20 reports filed by Madoff with regulatory authorities.</p> <p>21 Madoff focus reports were available back to 1983.</p> <p>22 A. Uh-huh.</p> <p>23 Q. Was this information on the focus reports</p> <p>24 accurate after 1992?</p> <p>25 A. I assume so. The revenue, yeah.</p>	<p>1 Q. So what would -- if there's a -- if you can</p> <p>2 quantify this. If you can't, just say you can't,</p> <p>3 but what would be the average number of shares that</p> <p>4 you would do on one ticket?</p> <p>5 A. On a ticket?</p> <p>6 Q. Yeah.</p> <p>7 A. It varies. I just -- no way to be able to</p> <p>8 tell you that. I know how many trades they were</p> <p>9 doing. They were doing, you know, anywhere from a</p> <p>10 low of 250,000 transactions a day to 600,000</p> <p>11 transactions a day. I mean, you know, how the</p> <p>12 shares were, you know, I don't -- you know, I don't</p> <p>13 know. I didn't pay attention to that.</p> <p>14 Q. Okay.</p> <p>15 A. Why is it relevant?</p> <p>16 Q. I'm just trying to get a sense of the</p> <p>17 volume. In other words, let's say if we take in</p> <p>18 1983 you did a reported -- average monthly reported</p> <p>19 trade tick at executions was 8,135.</p> <p>20 A. Well, let me put it to you this way. The</p> <p>21 industry kept records, transactions of how many</p> <p>22 transactions we did because they were reported, you</p> <p>23 know, to -- you know, to the NASD. I mean, it was</p> <p>24 reported all over the industry basically. These</p> <p>25 were not numbers that we generated. That went</p>
Page 103	Page 105
<p>1 Q. So, for example, where it says average</p> <p>2 monthly reported trade ticket executions, do those</p> <p>3 numbers look accurate to you?</p> <p>4 A. It would be under focus reports, yes.</p> <p>5 Q. Okay. And would the focus reports</p> <p>6 accurately reflect the monthly trade ticket</p> <p>7 executions?</p> <p>8 A. Uh-huh.</p> <p>9 Q. And what -- if you can answer this, what</p> <p>10 was the average volume of each trade ticket? I</p> <p>11 mean, I assume you wouldn't do a trade for three</p> <p>12 shares of IBM?</p> <p>13 A. No. These would be -- this is not -- I'm</p> <p>14 assuming these are not customer transactions. These</p> <p>15 are -- on the focus reports these were just</p> <p>16 reflecting the market making proprietary trading</p> <p>17 business.</p> <p>18 Q. What you were doing for your own account?</p> <p>19 A. Right.</p> <p>20 Q. Right.</p> <p>21 A. Yeah. So --</p> <p>22 Q. Do these numbers look accurate to you?</p> <p>23 A. I would -- I would assume so. If we run</p> <p>24 the focus reports, the focus reports were accurate</p> <p>25 all the time.</p>	<p>1 through the systems, the clearance and settlement</p> <p>2 systems and the reporting, trade reporting systems</p> <p>3 that we did anywhere from typically of a low of five</p> <p>4 to ten percent of the actual number of transactions</p> <p>5 were executed in the United States. That's not</p> <p>6 something that I made up.</p> <p>7 That was something that's been reported</p> <p>8 all over the -- all over the industry. It's been</p> <p>9 reported by the NASD and the SEC. I mean, by</p> <p>10 anybody's scope it was a huge amount of business.</p> <p>11 As a matter of fact, when we -- when we</p> <p>12 developed this Primex trading system and my partners</p> <p>13 were Goldman Sachs, Merrill Lynch, Lehman Brothers</p> <p>14 and Citicorp, the five -- all five firms that were</p> <p>15 the partners in Primex handled 50 percent of all the</p> <p>16 trading in the United States. Again, this is not</p> <p>17 numbers that we generated. This is what the</p> <p>18 industry reported.</p> <p>19 Q. Okay. But if I had been your customer,</p> <p>20 would you have taken an order from me to buy five</p> <p>21 shares of IBM?</p> <p>22 A. No.</p> <p>23 Q. So what was the low --</p> <p>24 A. We didn't -- if a customer called us up to</p> <p>25 buy stock for them, we never took an order. In</p>

27 (Pages 102 - 105)

CONFIDENTIAL

<p style="text-align: right;">Page 106</p> <p>1 other words, you couldn't as a customer, our firm 2 policy was to not handle a typical retail order for 3 a client. We either -- you either had to be a 4 broker-dealer or a bank to be a client of Madoff or 5 if you were a customer, you had to have -- when you 6 opened an account, you had to have a minimum of 7 500,000, which is at the very earliest \$500,000 in 8 the account. Typically it was then 2 million. That 9 was if you were an individual client.</p> <p>10 So but if you called us up and you said 11 you want to buy 20 shares of IBM or you want to buy 12 a thousand shares of IBM, we would not do that 13 order. If it wasn't -- the only customer business 14 that we did was where we managed the entire account 15 and we made the decisions.</p> <p>16 Q. Okay. Now, if you'd look on page 23 at the 17 bottom of the page, the question was how many 18 accounts under consideration for avoidance action 19 were established with Madoff prior to the inception 20 of the Ponzi scheme?</p> <p>21 In making the net investment method 22 determination net equity from these accounts, has 23 the Trustee used any of the pre-Ponzi disbursements? 24 If so, provide details, et cetera. And the response 25 says based on the Trustee's investigation and upon</p>	<p style="text-align: right;">Page 108</p> <p>1 Q. Did you ever need new cash from new 2 customers to pay the earnings that were reported on 3 the statements?</p> <p>4 A. No. Let me make a statement that I have 5 never to my recollection ever had a conversation 6 with a Trustee, ever. The Trustee never met with 7 me, never spoke to me, never asked me anything from 8 the date of my arrest until currently. I've had 9 meetings with the attorneys when the attorneys came 10 down here after, you know, I don't know whether that 11 was 2010 or some year in that, but there was 12 nothing; but the Trustee, the only time I ever saw 13 the Trustee was at my proffer meeting with the SEC.</p> <p>14 Q. In December 2008?</p> <p>15 A. December of 2008. And as far as I recall, 16 he never asked me anything and I never said anything 17 to him.</p> <p>18 Q. Okay. But did anyone from the Trustee's 19 law firm --</p> <p>20 A. No. The law firm, yes. They came down at 21 one period of time. David Sheehan could -- was 22 present.</p> <p>23 Q. Okay. But did they ever ask you whether 24 you actually executed the trades that were done in 25 the convertible arbitrage strategy?</p>
<p style="text-align: right;">Page 107</p> <p>1 review of the earliest records available to him, the 2 Trustee has found no evidence indicating that the 3 BLMIS investment advisory business has been operated 4 as anything but a Ponzi scheme.</p> <p>5 A. Right.</p> <p>6 Q. Now, did anyone on behalf of the Trustee 7 ever talk to you about the trades that you did in 8 the 1980s?</p> <p>9 A. No.</p> <p>10 Q. Did the Trustee ever disclose to you that 11 he, in fact, had some trading records from the 12 1980s?</p> <p>13 A. No.</p> <p>14 Q. Now, when SIPC is using here the phrase 15 Ponzi scheme, if you accept for a moment that a 16 Ponzi scheme is a nonexistent business in which 17 people invest where the sole source of paying 18 returns on their investments is investments from new 19 investors --</p> <p>20 A. Uh-huh.</p> <p>21 Q. -- on that definition was the split strike 22 ever a Ponzi scheme? In other words, did you ever 23 need new cash from new customers in order to redeem 24 other customers?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 109</p> <p>1 A. I don't think they ever asked me that. The 2 only conversation I had with them about trade at all 3 was the David Kugel scrap of paper that I mentioned 4 before.</p> <p>5 Q. Okay, okay. Did they ever ask you exactly 6 when the -- when you stopped buying the securities 7 for the split strike?</p> <p>8 A. No.</p> <p>9 Q. Did they ever ask you whether you needed 10 the money from new investors in order to pay old 11 investors?</p> <p>12 A. No.</p> <p>13 (Customers Exhibit Number 31 was marked 14 for identification.)</p> <p>15 MS. CHAITMAN: I'm up to Exhibit 31, and 16 this is the expert report of Bill Feingold. That's 17 okay.</p> <p>18 MR. GOLDMAN: I'll take it easy.</p> <p>19 Q. (By Ms. Chaitman) Okay. Have you seen 20 this document before?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Do you know Bill Feingold?</p> <p>23 A. No.</p> <p>24 Q. Did you ever hear about him?</p> <p>25 A. No.</p>

28 (Pages 106 - 109)

CONFIDENTIAL

Page 110	Page 112
<p>1 Q. I'd like to go through the substantive 2 portion of this report and I'd like you to give me 3 your insights on it; okay? 4 A. Uh-huh. 5 Q. So if you'd be good enough to turn to page 6 two? 7 A. Uh-huh. 8 Q. And if you could just read paragraph 12 and 9 then if you have any comments on that, I'd like you 10 to tell me what they are. 11 A. Yes. 12 Q. Okay. Can you tell me what they are? 13 A. What? What did you ask me? 14 Q. Did you have any comments on this? Do 15 you -- do you -- 16 A. Yeah. I think, you know, he pointed out, 17 you know, the fallacy of what Dubinsky used, made 18 statements about volume and so on. He's 19 criticizing -- I think there were 41 points that he 20 made that Dubinsky was incorrect in his analysis, 21 which was basically very similar to all my comments 22 when I analyzed the Dubinsky report. 23 Q. Okay. In paragraph 13 he says that most 24 trading and bonds, unlike stocks, takes place in the 25 over-the-counter market and that's something you had</p>	<p>1 are less readily available. Is that accurate? 2 A. That's correct. 3 Q. If you'd just take a look at paragraph 15 4 and if you'd just take a moment to read that and 5 then I'd like your comments on it. 6 A. Right. He's basically saying that, you 7 know, that -- that convertible bonds and bonds in 8 general do not trade for the most part on the floor 9 of an exchange. They trade over the counter between 10 dealers. Madoff is one of the largest convertible 11 bond dealers in the country. We made more markets 12 in convertible bonds than any other firm. He 13 doesn't state that, but that was common knowledge. 14 And he's saying that you couldn't get 15 accurate information, you know, until 2002 because 16 that was when TRACE came in. And even when TRACE 17 came in, there was question as to whether or not the 18 correct volume was reported even then. Bond dealers 19 in general do not like to report their transactions 20 or their volume because they consider it proprietary 21 information. 22 The SEC would like -- look, the SEC would 23 like everything to be transparent. That's been a -- 24 in the 50 years I've been in this industry, that has 25 been a debate that went on and still has not been</p>
Page 111	Page 113
<p>1 testified to; right? 2 A. Right. 3 Q. And then he quotes the SIFMA website for 4 the statement, quote, the OTC market is much larger 5 than the exchange markets and the vast majority of 6 bond transactions, even those involving exchange 7 listed issues, take place in this market? 8 A. Correct. I think this is -- he's 9 reflecting very similar to the last time we had a 10 deposition and I produced a very large book that was 11 written. I gave -- you took as evidence -- 12 Q. Yes. 13 A. -- that stated all of this. 14 Q. Right. 15 A. That was in complete contrast to Dubinsky's 16 report. 17 Q. Right. And if Dubinsky had spoken to 18 anyone who did trading and convertible bonds in the 19 1980s, would they have found this information out? 20 A. Yes. 21 Q. In paragraph 14 Feingold says in an OTC 22 market investors do not trade directly with each 23 other but with many individual dealers who 24 continuously make markets, paren, buy and sell. As 25 such, OTC markets are much less centralized and data</p>	<p>1 resolved. And to a certain extent, you know, they 2 blame me for a lot of -- a lot of this because of 3 the fact that we were the ones that pioneered the 4 form of electronic trading. 5 Right now all of these problems that you 6 have with this what they call that book that came 7 out, Flash Boys, all the trading is done in dark 8 pools and not -- when I came into this industry, 9 98 percent of the business in securities was traded 10 on the floor of an exchange and listed securities. 11 The SEC was unhappy with that and I was 12 given the responsibility for developing a more 13 competitive marketplace. And that's how we started 14 this electronic trading and that's how I developed 15 NASDAQ originally. The volume on the -- on New York 16 Stock Exchange's list of securities today is only 17 about 30 percent on the floor of the exchange and 18 70 percent if it is done over the counter. 19 So and that's a constant problem. The 20 whole marketplace has changed and will probably 21 never go back to the way it was. And nobody wants 22 to -- the goal of the industry is to have less 23 transparency because people always -- always want to 24 trade against somebody else. They're all competing 25 with each other.</p>

29 (Pages 110 - 113)

CONFIDENTIAL

<p style="text-align: right;">Page 114</p> <p>1 So the idea is to conceal what you're</p> <p>2 doing, what you're buying, what you're selling. And</p> <p>3 because of what the SEC would like to do, they'll</p> <p>4 never change that. Business is done more in Europe</p> <p>5 now than ever before and it's -- that's where the</p> <p>6 industry is.</p> <p>7 Q. In paragraph 19 Mr. Feingold says, thus,</p> <p>8 when Mr. Dubinsky cites data from the New York Stock</p> <p>9 Exchange to support his arguments about bond volume,</p> <p>10 he is treating approximately one percent of the</p> <p>11 activity as indicative of the entire market.</p> <p>12 A. Really?</p> <p>13 Q. Is that --</p> <p>14 A. Yes.</p> <p>15 Q. In fact, I think that the book that you</p> <p>16 brought to the last deposition --</p> <p>17 A. Right, right.</p> <p>18 Q. -- said that one percent of the convertible</p> <p>19 bond trading was done on the New York Stock</p> <p>20 Exchange?</p> <p>21 A. Right.</p> <p>22 Q. And if Mr. Dubinsky or someone working for</p> <p>23 him had spoken to anyone who did convertible bond</p> <p>24 trading in the 1980s, would they have learned that?</p> <p>25 A. Look, without trying to be cruel, the</p>	<p style="text-align: right;">Page 116</p> <p>1 securities because he -- you know, it didn't match</p> <p>2 the volume of the New York Stock Exchange when</p> <p>3 everybody knows that you don't -- you can't just</p> <p>4 look at the New York Stock Exchange volume.</p> <p>5 I mean, how could you write a report that</p> <p>6 said that? What he should have said is I do not</p> <p>7 have access to the information to make a</p> <p>8 determination of whether these transactions took</p> <p>9 place or not. That's what -- that's what -- you</p> <p>10 know, that's what I would have done or anybody would</p> <p>11 have done.</p> <p>12 Q. In paragraph 27 Mr. Feingold writes in</p> <p>13 paragraph 99 Mr. Dubinsky inaccurately describes the</p> <p>14 process by which convertible securities become</p> <p>15 common shares. He writes that, quote, many</p> <p>16 convertible securities have the option for the</p> <p>17 company to call the security at a predetermined date</p> <p>18 or at the company's discretion, that is, the company</p> <p>19 has the right to convert the convertible securities</p> <p>20 into common shares.</p> <p>21 In instances where the bond or preferred</p> <p>22 equity is called, the shares are converted on the</p> <p>23 record date at a determined amount, end quote. In</p> <p>24 fact, except for a specific subcategory known as</p> <p>25 quote, mandatory, end quote, convertible securities,</p>
<p style="text-align: right;">Page 115</p> <p>1 Dubinsky report is an embarrassment. I mean, I just</p> <p>2 -- that's the only way to describe it. Quite</p> <p>3 frankly, I don't understand it because if you look</p> <p>4 at his background, you know, as an accountant and</p> <p>5 his so-called fraud order, I don't understand how --</p> <p>6 to me it's a mystery and would be for anybody a</p> <p>7 mystery that would read that report would be</p> <p>8 stunned, you know, at his -- at the report.</p> <p>9 I don't understand it. I mean, Feingold's</p> <p>10 background is certainly equal, if not better, than</p> <p>11 Dubinsky's and it's certainly more current. So but,</p> <p>12 quite frankly, you could find anybody that was</p> <p>13 familiar with the marketplaces that would be able to</p> <p>14 write the same kind of report that Feingold wrote</p> <p>15 that was critical of Dubinsky's report.</p> <p>16 He does state in the report if you read</p> <p>17 through the Dubinsky report, he does make comments</p> <p>18 that he doesn't have -- he doesn't have access to</p> <p>19 certain information. He can't find it, but that</p> <p>20 didn't prevent him from still coming -- drawing</p> <p>21 conclusions.</p> <p>22 So if you're going to -- if you're going</p> <p>23 to say, well, I only looked at the New York Stock</p> <p>24 Exchange volume, you know, and, therefore, I'm</p> <p>25 determined that Madoff could not have bought</p>	<p style="text-align: right;">Page 117</p> <p>1 the securities are convertible at the investor's</p> <p>2 discretion, not the issuing company's. When a</p> <p>3 company calls a security, the investor is then given</p> <p>4 a period typically between 20 and 120 days in which</p> <p>5 to decide whether to convert the security into</p> <p>6 common shares or to accept the cash call price</p> <p>7 stipulated in the company's call notice. Do you</p> <p>8 agree with Mr. Feingold on that?</p> <p>9 A. Yes.</p> <p>10 Q. Now, in paragraph 30 Mr. Feingold writes</p> <p>11 footnote one of two of Mr. Dubinsky's report</p> <p>12 contends that a significant percentage of the short</p> <p>13 positions reported by Madoff customers exceed the</p> <p>14 amount of short interest in those stocks as reported</p> <p>15 at month end by the stock exchange. I found this</p> <p>16 very dubious.</p> <p>17 Going through the list I noticed that</p> <p>18 Pfizer, one of the world's largest drug companies,</p> <p>19 had short interests according to Mr. Dubinsky's</p> <p>20 table of 826,162 shares at the end of March 1992.</p> <p>21 Pfizer's closing price that month was \$69.50 per</p> <p>22 share according to Yahoo Finance.</p> <p>23 Average daily trading volume in Pfizer was</p> <p>24 10.74 million shares. If Mr. Dubinsky's data are</p> <p>25 correct, the short interest in Pfizer then</p>

30 (Pages 114 - 117)

CONFIDENTIAL

<p style="text-align: right;">Page 118</p> <p>1 constituted less than eight percent of an average 2 day's volume. 3 A. I don't know what you -- I don't know what 4 you're asking me. I mean, as I say, I'm at a loss 5 to explain this whole Dubinsky report. I know, it's 6 -- if it wasn't such a -- if his accusations weren't 7 so serious, it would almost be comical. 8 Q. Well, is it difficult to find out what the 9 average daily volume in Pfizer was? 10 A. Yes, I mean, because volumes were reported. 11 The over the -- he's looking at volume that was 12 reported on the exchange when over-the-counter 13 dealers don't report the volume. I mean, you know, 14 so you can't -- it's like adding apples and oranges. 15 You can't -- you can't -- you can't find the 16 information. 17 Again, as I said before, the business of 18 an exchange is to try and let people know exactly 19 what has happened. That's what they advertise. You 20 know, an exchange wants to make everything public 21 because in theory, you know, the SEC would love, you 22 know, the public to understand everything that goes 23 on, how many shares trade, where they trade, at what 24 price they trade. Institutions who do the majority 25 of the business want to do just the opposite.</p>	<p style="text-align: right;">Page 120</p> <p>1 did any transactions. He made statements like 2 because he couldn't find confirmations, therefore, 3 from other broker-dealers. Therefore, the 4 transaction never took place. 5 All right. Him not understanding that the 6 industry stopped producing confirmations to 7 noncustomers. So when I bought stock from -- you 8 know, in the open market from Merrill Lynch, we 9 didn't send confirmations to each other. The 10 industry discontinued that. 11 Picard drew a conclusion because he 12 couldn't produce a confirmation. Therefore, the 13 trade never took place. He totally ignored the fact 14 that, number one, confirmations weren't even 15 generated any longer, which is something that is 16 very obvious to anybody in the industry. Also, he 17 totally eliminated the fact that nobody keeps 18 records past six years any longer. 19 They're destroyed, you know. So he -- you 20 know, but he had a conclusion that he drew from day 21 one very similar to what the U.S. Attorney did when 22 he asked me do I ever short stocks and I said yes, 23 of course, I short stocks. You know, he said did 24 you ever sell to a customer that didn't know? Of 25 course, I did.</p>
<p style="text-align: right;">Page 119</p> <p>1 They do not want to let, you know, 2 everybody know what they're doing because it's no 3 different than like insider trading. You know, the 4 idea is you're in an industry where everybody is 5 competing against each other, including -- including 6 the public customers. You have to understand that 7 the person who buys stock thinks he knows something 8 that the person who's selling it doesn't understand. 9 It's not a zero sum gain. Someone is 10 going to be a winner, someone is going to be a 11 loser. And it's the same. So information is the 12 key. People are trying to get less information out 13 as possible, you know, but that's the way the 14 industry is done now. The markets are not -- 15 they're much less transparent today than they were 16 20 years ago, you know. 17 So you can't -- it's not an accident that 18 people can't -- that Dubinsky can't find this 19 information that he's trying to do because it's not 20 available. I mean, quite frankly, I think that what 21 happened was in fairness -- fairness to me, not the 22 Trustee -- the Trustee drew conclusions from day one 23 of what he thought he wanted to -- he wanted the 24 outcome to be. He wanted the outcome to be that I 25 was a fraud from the very beginning, that I never</p>	<p style="text-align: right;">Page 121</p> <p>1 You know, and I had to explain to the U.S. 2 Attorney that that's what the business of market 3 makers are doing, you know; but so he wanted to 4 determine, well, since I always shorted stock back 5 in 1962, that I might have never bought stock. I 6 mean, you know, I don't -- I think that what 7 happened was Dubinsky was -- you know, the Trustee 8 must have told Dubinsky this is what my conclusion 9 was. This is what my theory is. 10 And Dubinsky, whether he did it in a 11 devious way or not, I don't think so. I just think 12 that he just did the best he could. He wanted to 13 get information, so he took whatever information was 14 available. The fact that the information didn't 15 exist didn't mean that, you know -- that, you know, 16 the conclusion they drew, it didn't make any sense. 17 I don't know what else to say. 18 Q. Okay. Now, Mr. Dubinsky opined that you 19 were insolvent as far back as 1983. 20 A. I saw that. 21 Q. Do you agree with him? 22 A. No. I can tell you he stated how he came 23 to that conclusion, you know. He just took whatever 24 the -- you know, whatever -- he made the conclusion 25 that I never did any transactions in '83. So,</p>

31 (Pages 118 - 121)



CONFIDENTIAL

<p style="text-align: right;">Page 122</p> <p>1 therefore, he said since the customer showed that, 2 you know, balances in the account from transactions, 3 he figured, okay, that was a liability that Madoff 4 had. He totally eliminated the fact that I was 5 doing business, you know, back in 1983 and so on. 6 So, therefore, I had the assets to cover that. 7 So he said, well, he knew what the 8 liabilities were because it was a customer 9 statement. He had no way of knowing what the assets 10 that I had were because he didn't have any records 11 going back then. I mean, who would possibly make a 12 statement like that? I mean, the biggest mistake I 13 made was not going to trial. 14 Had I gone to trial rather than just 15 saying okay, I'm going to eliminate the government 16 spending millions of dollars and years in a trial 17 with me, I'm just going to admit that I was guilty 18 because I was from 1992 on, which was bad enough. 19 You know, they for some reason, the Trustee wanted 20 to determine that I was guilty from 1963. 21 All right. Had I gone to trial, I would 22 have called in any number of expert witnesses like 23 this Feingold or anything else and the judge would 24 have totally laughed the Trustee out of court. Why 25 he even bothered writing -- 90 percent of his report</p>	<p style="text-align: right;">Page 124</p> <p>1 A. In 2002 I did not have -- if he's -- I 2 would say yes, I was insolvent because I did not 3 have enough assets to cover the liabilities that I 4 had with the customers in 2002. 5 Q. If you had -- if everyone had demanded 6 payment at one time? 7 A. Yes. You have to assume that if I show the 8 customers had a liability on that, whether they 9 asked me for it or not, I was insolvent. You have 10 to make the assumption that if you owe the money 11 out, whether you have the ability -- if you don't 12 have the ability to pay if called, you're insolvent. 13 Q. Okay. Now, as of 2002 if the four families 14 had paid you the money they owed you, would you 15 still have been insolvent? 16 A. In 2002? Yes, because the fund business 17 was -- I wouldn't have been able to cover all my 18 direct accounts, you know, other than the funds 19 because the customers only had a liability of \$5 20 billion whereas the funds had \$14 billion. 21 So, you know, I wouldn't have enough money 22 to cover, you know, \$19 billion; but I certainly 23 wouldn't have had enough money to cover all my 24 individual clients but, quite frankly, it doesn't 25 make a difference. They're both the same.</p>
<p style="text-align: right;">Page 123</p> <p>1 deals with after 1992. I already admitted that I 2 didn't do the transactions after '92. So why spend 3 all that time on that, you know? What he did prior 4 to that made absolutely no sense anyhow. 5 Q. Now, did Dubinsky acknowledge that you held 6 securities at Lehman, Bear Stearns, Morgan 7 Stanley -- 8 A. No. 9 Q. -- Fidelity and JPMC? 10 A. No, no. That's not true. He did state 11 that I had an account at Morgan Stanley, yeah. He 12 stated that. He didn't give any details on it but, 13 I mean, it was he had a copy of the Morgan Stanley 14 report in his information here. So, therefore, he 15 had to know that I had securities over there. He 16 did state that I had securities at those -- at other 17 firms, yeah. He did state that. 18 Q. But did he acknowledge that you had 19 purchased those securities -- 20 A. No. 21 Q. -- with 703 account money? 22 A. No. 23 Q. Now, Mr. Dubinsky also opined that your 24 firm was insolvent from 2002 on. Do you agree that 25 you were insolvent as of 2002?</p>	<p style="text-align: right;">Page 125</p> <p>1 Q. Looking at paragraph 39 of Mr. Feingold's 2 report, he says an active trader would likely have 3 held many convertible arbitrage positions for 4 substantially less than the period until the next, 5 paren, usually, end paren, semi-annual coupon was 6 paid. Most likely, bonds were either converted or 7 sold into the open market. 8 Again, an investor who sells a corporate 9 bond receives accrued interest from the buyer 10 instead of collecting on the coupon date from the 11 issuer and the interest is built into the total cash 12 inflow. 13 A. Right. 14 Q. Do you agree with that? 15 A. Yes. 16 Q. Is that the -- is that the strategy that 17 you used? 18 A. Yeah. It's what anybody would use at 19 TRACE. It's not unique to Madoff. It's, you 20 know -- it's, you know, standard operating 21 procedure. 22 MS. CHAITMAN: Okay. All right. We have 23 to take a break because they have to change the 24 disc. 25 THE VIDEOGRAPHER: Going off the record.</p>

32 (Pages 122 - 125)

CONFIDENTIAL

Page 126

1 The time is 12:46 p.m.  
2 (A recess was taken.)  
3 THE VIDEOGRAPHER: Back on the record.  
4 This begins disc number three. The time is  
5 1:00 o'clock p.m.  
6 Q. (By Ms. Chaitman) Mr. Madoff, I just have  
7 one other area that I want to cover with you and  
8 that is Mr. Dubinsky's conclusion that the  
9 proprietary trading aspect of your business never  
10 made money.  
11 A. Yeah. I'm sort of at a loss for that  
12 because when I read that in his report, his own  
13 information was, and I don't -- do you have his  
14 report?  
15 Q. I do.  
16 A. And as I say, I'm overly sensitive to  
17 anybody criticizing the side of the firm that my  
18 sons ran, which was the proprietary and market  
19 making side. So where is the section --  
20 MS. CHAITMAN: I think it's at the very  
21 end.  
22 MR. SHEEHAN: I think there is an index.  
23 THE WITNESS: Don't try to be -- don't try  
24 to be accurate. I'm not used to that.  
25 MR. SHEEHAN: All right.

Page 127

1 THE WITNESS: Oh, here it is.  
2 MR. GOLDMAN: Bernie, tell us what page  
3 you're on. I'm sorry.  
4 MS. CHAITMAN: Just tell us, yeah.  
5 THE WITNESS: Page 116. He correctly  
6 states that the firm from 2000 to 2008 showed  
7 revenue of a billion three hundred thousand dollars  
8 in proprietary trading, but of that -- during that  
9 period it was 714, \$715 million worth of income that  
10 came in from the 703, from the customer account.  
11 So if you eliminate that, the proprietary  
12 trading only had legitimate profits of \$573 million,  
13 you know, after you eliminated the money that came  
14 from the customer accounts into the proprietary  
15 trading. So it still showed the firm made 572  
16 million, \$573 million of profit.  
17 Stating that, how does he determine that  
18 proprietary trading was not profitable? I don't  
19 understand it. It's like saying one and one equals  
20 three.  
21 Q. (By Ms. Chaitman) Do you agree that 716 --  
22 \$714 million was transferred from the 703 account to  
23 the proprietary trading?  
24 A. I agree with that. That really, you know,  
25 if you want to eliminate all the customer money that

Page 128

1 was -- that was funneled into the firm, you know,  
2 was from customers, was not from proprietary  
3 trading, I would say that would be correct; but that  
4 in itself is not really correct because what he has  
5 no way of knowing is he -- is that the big four  
6 accounts that owed me all this money, for example,  
7 with one account that had a six point some odd  
8 billion dollar out, you know, debit balance, when  
9 those accounts put me in a short -- what's called a  
10 naked short position, which is what created my  
11 problem why I had to start the fraud in '92, all  
12 right, those short positions were mark to market,  
13 got mark to market at the clearing house every day,  
14 which typically happened.  
15 So I was called for money to cover those,  
16 that deficit all the time. That was money that I  
17 was taking, so I did that by -- you know, part of it  
18 by transferring the money from the customer 703  
19 account to be able to meet those margin calls, which  
20 was -- which I would have done normally had I been  
21 showing all the figures correctly.  
22 So, you know, realistically, what I did  
23 was I penalized my proprietary traders' income, you  
24 know, but my proprietary traders as far as they're  
25 concerned, they made a million -- a billion two.

Page 129

1 And when I paid -- when I paid my -- the  
2 percentage of their -- when I paid their bonuses  
3 based upon their profits, I paid it on a billion  
4 three because proprietary traders, I had no reason  
5 to penalize my proprietary traders because of the  
6 problem that I put myself in with those big four  
7 clients. You understand what I'm saying?  
8 Q. I just want to clarify something. Staying  
9 on that page, the 714 --  
10 A. Million dollars.  
11 Q. -- million that Dubinsky found went from  
12 the 703 account, now, the proprietary trading didn't  
13 have their own bank account; right?  
14 A. No.  
15 Q. It went into the BNY account?  
16 A. Right.  
17 Q. Okay. So you agree that 714 million from  
18 the 703 account went into the BNY account?  
19 A. Right.  
20 Q. And as I understand your testimony, what  
21 you're saying is that some portion of that money was  
22 used by you to meet the margin calls --  
23 A. Right.  
24 Q. -- on the portfolio that you assumed from  
25 the four families?

33 (Pages 126 - 129)

CONFIDENTIAL

Page 130	Page 132
<p>1 A. Correct.</p> <p>2 Q. That was subject to the hold harmless?</p> <p>3 A. Right. Which normally I would have done</p> <p>4 had I shown that that was going on, but I didn't.</p> <p>5 So Dubinsky is not -- Dubinsky is correct. That</p> <p>6 money did come from the 703 account, but what he</p> <p>7 doesn't have anything to do with, which he doesn't</p> <p>8 know about, was the whole problem that I had</p> <p>9 occurred -- you know, that created that problem.</p> <p>10 Q. But if the money went from the 703 account</p> <p>11 to the BNY account, then wasn't it commingled with</p> <p>12 all the money in the BNY account?</p> <p>13 A. Yeah.</p> <p>14 Q. So what is the basis of saying that any of</p> <p>15 it went to proprietary trading?</p> <p>16 A. Because the problem, the margin calls that</p> <p>17 I got was because of customer account. In other</p> <p>18 words --</p> <p>19 Q. But was that charged to the proprietary</p> <p>20 trading business?</p> <p>21 A. No. It was. It wasn't on the focus report</p> <p>22 because it shouldn't have been. In other words, had</p> <p>23 I shown all of this stuff properly, that's what the</p> <p>24 SEC would have said yeah, of course, you can take</p> <p>25 them. That money in the 703 account is actually</p>	<p>1 get an outline out, but it will take just a second.</p> <p>2 EXAMINATION</p> <p>3 BY MR. SHEEHAN:</p> <p>4 Q. Mr. Madoff, before we get started, I just</p> <p>5 want to ask you a question that wasn't quite asked</p> <p>6 the way I wanted it to be. That is, are you on any</p> <p>7 medications that would impair your ability to</p> <p>8 testify here today?</p> <p>9 A. No, no.</p> <p>10 Q. Okay. That's not particularized towards</p> <p>11 you. It's asked at every deposition.</p> <p>12 A. Yeah. No. I understand.</p> <p>13 Q. Because people do take medications that</p> <p>14 sometimes doesn't render --</p> <p>15 A. No. I'm on lots of medication, but nothing</p> <p>16 that would impair my --</p> <p>17 Q. Okay. All right. Just so you and I agree</p> <p>18 on that. Okay. Let me sort of go back over some of</p> <p>19 the testimony --</p> <p>20 A. Right.</p> <p>21 Q. -- this afternoon before we get into some</p> <p>22 other stuff I want to talk about. On November 30,</p> <p>23 2008 your customer statements showed you to be owed</p> <p>24 your customers \$64.6 billion, thereabouts; right?</p> <p>25 A. Right.</p>
Page 131	Page 133
<p>1 part of that money is due me, was due Madoff. Not</p> <p>2 all of it, but part of it was. In other words, the</p> <p>3 monies that the four clients owed me, you know, from</p> <p>4 the hold harmless agreements, that money, part of</p> <p>5 that, the 703 account was their monies.</p> <p>6 So I was not wrong. Under normal</p> <p>7 circumstances I would have taken that money. The</p> <p>8 reason why I paid my traders, my proprietary traders</p> <p>9 on the billion three, because that's what they made.</p> <p>10 The proprietary traders made a billion three. They</p> <p>11 didn't only make 573 million. They made a billion</p> <p>12 three.</p> <p>13 And if my -- if I didn't pay my traders</p> <p>14 properly, they would have said -- they get</p> <p>15 25 percent of their trade. They would have said to</p> <p>16 me, listen, because you made this ridiculous</p> <p>17 agreement with your four big clients and they cost</p> <p>18 you all that money, don't penalize us. That's your</p> <p>19 problem, which would have been true.</p> <p>20 MS. CHAITMAN: Okay. I have no further</p> <p>21 questions. Thank you, Mr. Madoff.</p> <p>22 MR. SHEEHAN: You're done?</p> <p>23 MS. CHAITMAN: Yeah. I'm done. You want</p> <p>24 to change seats or --</p> <p>25 MR. SHEEHAN: No. I'm fine. I do need to</p>	<p>1 Q. And when the Trustee looked at all of your</p> <p>2 bank accounts and stock they had available at that</p> <p>3 point, you had a little over 300 million left?</p> <p>4 A. Right.</p> <p>5 Q. So in the course of -- you're kind of</p> <p>6 short, yeah, like 64.3 billion dollars; right?</p> <p>7 A. Right.</p> <p>8 Q. Are you saying that that disappeared over</p> <p>9 -- that you actually could have covered everybody</p> <p>10 prior to 2002?</p> <p>11 A. No, no.</p> <p>12 Q. Okay. So what you did do, though, is that</p> <p>13 in 2008 according to our calculations you actually</p> <p>14 paid redemptions of close to \$12 billion?</p> <p>15 A. Uh-huh.</p> <p>16 Q. About 11.7, I think, is what it was?</p> <p>17 A. Right.</p> <p>18 Q. Does that sound accurate to you?</p> <p>19 A. I guess so, yeah.</p> <p>20 Q. So there was a lot of money going out</p> <p>21 during 2008; right?</p> <p>22 A. Right.</p> <p>23 Q. But it wasn't anywhere near \$64 billion --</p> <p>24 A. No.</p> <p>25 Q. -- that you said you were long?</p>

34 (Pages 130 - 133)

CONFIDENTIAL

Page 134	Page 136
<p>1 A. No.</p> <p>2 Q. And is it your testimony that that \$64</p> <p>3 billion shortfall occurred from 1992 through 2008?</p> <p>4 A. Yeah.</p> <p>5 Q. All right. Do you know what at the end of</p> <p>6 1992 you showed on your books and records assuming</p> <p>7 all trading is as you say it was, what was on your</p> <p>8 books and records then as what you were -- you</p> <p>9 yourself were long?</p> <p>10 A. Well, first of all, you have to understand</p> <p>11 that the -- there was -- the losses that I incurred</p> <p>12 from the short positions of the big four accounts,</p> <p>13 all right, that occurred from the 1987 through 1992</p> <p>14 when the market had recovered from the crash in</p> <p>15 1987. That was -- that was substantial. That could</p> <p>16 have been, you know, as I said, I don't know how</p> <p>17 many billions of dollars it was at the time; but you</p> <p>18 have to take that into consideration, you know.</p> <p>19 Q. Right.</p> <p>20 A. So, you know, the \$64 billion, don't</p> <p>21 forget, is -- the reason that number got so large</p> <p>22 was that I was generating falsely like 12 percent</p> <p>23 return on all the -- on the principal money that was</p> <p>24 invested. Let's say the total of almost</p> <p>25 \$19 billion, you know, at 12 percent return from</p>	<p>1 Q. Right.</p> <p>2 A. -- then I had to borrow \$30,000 worth of</p> <p>3 bonds from my father-in-law to be able to make my</p> <p>4 clients whole because I felt responsible for the</p> <p>5 losses that they incurred. That's why in like 1963</p> <p>6 I decided I didn't really want to be in the retail</p> <p>7 business. I wanted to be a market maker. So I</p> <p>8 start making markets from 1963 on.</p> <p>9 Q. When did -- did there come a time when you</p> <p>10 went back into retail business?</p> <p>11 A. No.</p> <p>12 Q. When did you start what we call the</p> <p>13 investment advisory business?</p> <p>14 A. Probably '70s.</p> <p>15 Q. And you would not characterize that as a</p> <p>16 customer oriented business?</p> <p>17 A. Not really. I knew, yes, it would be.</p> <p>18 Q. Right.</p> <p>19 A. It would be, but it was never -- I never</p> <p>20 had a business where a customer would call me up and</p> <p>21 say I want to buy stock or what should I buy. In</p> <p>22 other words, when I started my business it was</p> <p>23 always sort of like a discretionary-type business</p> <p>24 where people would give me -- you know, basically it</p> <p>25 was family and friends who would give me a certain</p>
Page 135	Page 137
<p>1 nineteen ninety -- from 1992 through 2008. That's</p> <p>2 where the \$64 billion came in.</p> <p>3 Q. Okay.</p> <p>4 A. It was the profits that were being</p> <p>5 generated, the false profits that were being</p> <p>6 generated.</p> <p>7 Q. I understand that, but let's go back to the</p> <p>8 beginning.</p> <p>9 A. Uh-huh.</p> <p>10 Q. I think sometimes chronologically it helps</p> <p>11 when we talk about this stuff.</p> <p>12 A. Right.</p> <p>13 Q. So you started the business in 1960; right?</p> <p>14 A. '60, right.</p> <p>15 Q. That's when you first registered. And did</p> <p>16 you start out as a market maker --</p> <p>17 A. Yes.</p> <p>18 Q. -- or as a retail business?</p> <p>19 A. Well, I started, I did a retail business</p> <p>20 for the first three years until 1963. Then I became</p> <p>21 a market maker. After the market I had the 1962 new</p> <p>22 issue break, which was during the Cuban Missile</p> <p>23 Crisis and so on. When I had my first bad</p> <p>24 experience where I lost about \$30,000 for some</p> <p>25 family accounts --</p>	<p>1 amount of money. And I would invest, started doing</p> <p>2 convertible bond arbitrage. I never did retail</p> <p>3 business, like if you called me up and said I want</p> <p>4 to buy IBM.</p> <p>5 Q. Right.</p> <p>6 A. It was always a hedge type of trading that</p> <p>7 I started doing.</p> <p>8 Q. So in the early '70s you started into the</p> <p>9 IA business? Let's just call it that.</p> <p>10 A. From starting with the big four accounts</p> <p>11 plus some family and friends.</p> <p>12 Q. Okay. So the big four accounts started</p> <p>13 with you in the early '70s?</p> <p>14 A. Yes.</p> <p>15 Q. Now, the strategy --</p> <p>16 A. Some of them.</p> <p>17 Q. Okay. We'll get into that later if it's</p> <p>18 important.</p> <p>19 A. Right.</p> <p>20 Q. But what were the strategies you initially</p> <p>21 engaged in? You mentioned convertible arbitrage.</p> <p>22 Were you doing that right away?</p> <p>23 A. Yes. That was right.</p> <p>24 Q. Okay. Were you doing other investment</p> <p>25 strategies at the same time?</p>

35 (Pages 134 - 137)

CONFIDENTIAL

<p style="text-align: right;">Page 138</p> <p>1 A. No.</p> <p>2 Q. Okay. I'm going to ask you some</p> <p>3 definitions just for --</p> <p>4 A. Uh-huh.</p> <p>5 Q. -- you know, the record. What's a discount</p> <p>6 arb?</p> <p>7 A. A discount arb is when -- well, a discount</p> <p>8 convertible it would be.</p> <p>9 Q. Yeah. A discount convertible.</p> <p>10 A. Yeah. A discount convertible is a</p> <p>11 convertible is selling at a discount to what it's</p> <p>12 worth, the stock. In other words, if a bond is</p> <p>13 convertible into stock let's say at \$10 a share and</p> <p>14 you're able to buy there would be a hundred -- the</p> <p>15 bond would be trading at a hundred and the stock</p> <p>16 would be trading at let's say ten. All right.</p> <p>17 That's what they call on the money.</p> <p>18 Q. Right.</p> <p>19 A. If the convertible bond, if you could buy</p> <p>20 the convertible bond below par, below 100, let's say</p> <p>21 you bought it at 98 and sold the stock at 10, you're</p> <p>22 doing a discount arbitrage because you can make --</p> <p>23 you're making two points on it. So you would buy</p> <p>24 the bond, short the stock at 10 and you lock in a</p> <p>25 bona fide profit of two points.</p>	<p style="text-align: right;">Page 140</p> <p>1 A. I mean, when I -- when I was doing it,</p> <p>2 there was always more volume in convertible bonds</p> <p>3 than there would be let's say in warrants, units or</p> <p>4 rights; but depending upon when it was, depending</p> <p>5 on, you know, for example, when AT&amp;T split up and --</p> <p>6 and, you know, and became all the baby Bells that</p> <p>7 they traded, we made a market.</p> <p>8 We were the primary market maker. As a</p> <p>9 matter of fact, I have a copy in my records here of</p> <p>10 an ad that we ran in the Wall Street Journal that</p> <p>11 said that we made markets, you know, to banks,</p> <p>12 brokers and institutions in all of the convertible</p> <p>13 securities. We did a very big business --</p> <p>14 Q. Right.</p> <p>15 A. -- trading all the various AT&amp;T break-up</p> <p>16 issues.</p> <p>17 Q. In the normal course in the '70s, let's</p> <p>18 give it a time frame, are discount arbitrage</p> <p>19 opportunities plentiful?</p> <p>20 A. Yes. There were convertible bonds traded</p> <p>21 -- first of all, you have to understand that most</p> <p>22 convertible arbitrage trading did not go through the</p> <p>23 conversion process, which he even -- Dubinsky even</p> <p>24 states that in his report. In other words --</p> <p>25 Q. You mean you didn't go through the -- I'm</p>
<p style="text-align: right;">Page 139</p> <p>1 Q. In terms of convertible securities, there</p> <p>2 are different kinds of those; are there not?</p> <p>3 A. Well, for the most part they're all the</p> <p>4 same.</p> <p>5 Q. Well, they may have the same features, but</p> <p>6 some are --</p> <p>7 A. Some are trade in premiums.</p> <p>8 Q. Yeah, but what I meant by that is this.</p> <p>9 Some are bonds. Some are warrants. Some are</p> <p>10 rights. Some are preferred securities?</p> <p>11 A. Yeah. Well, they're not bonds, though.</p> <p>12 Arbitrage securities could be convertible bonds,</p> <p>13 convertible preferreds, units, warrants, rights.</p> <p>14 Q. All right.</p> <p>15 A. That's all hedge type of trading.</p> <p>16 Q. Right. And did you in your convertible</p> <p>17 arbitrage strategy use all of those types?</p> <p>18 A. All of those, yes.</p> <p>19 Q. You used all of those?</p> <p>20 A. Right.</p> <p>21 Q. And do you know whether bonds were a</p> <p>22 minority or a majority of the trades you engaged in?</p> <p>23 A. They were -- well, depending upon when it</p> <p>24 was, particularly bonds would be the majority of it.</p> <p>25 Q. Okay. What does that mean, when it was?</p>	<p style="text-align: right;">Page 141</p> <p>1 sorry to interrupt you, but just to clarify, you</p> <p>2 didn't go through the conversion process or the</p> <p>3 industry?</p> <p>4 A. The industry. In other words, typically</p> <p>5 most convertible bonds should always trade at a</p> <p>6 premium. In other words, when a bond trades at a</p> <p>7 discount, it's sort of a freak.</p> <p>8 Q. That was my question. Thank you.</p> <p>9 A. Yeah, yes.</p> <p>10 Q. Okay.</p> <p>11 A. So that, you know, obviously, if you can</p> <p>12 buy a convertible bond at a discount, you would</p> <p>13 typically buy it and convert it because you have a</p> <p>14 guaranteed profit and you lock it up. All right.</p> <p>15 But most convertible bonds create premiums because</p> <p>16 nobody in their right mind should -- you know,</p> <p>17 should ever, you know, buy a -- should buy common</p> <p>18 stock if you could buy a convertible bond at a</p> <p>19 discount.</p> <p>20 Q. Right.</p> <p>21 A. All right. So typically, in other words,</p> <p>22 look, to give you an example, when I hired David</p> <p>23 Kugel when he -- David Kugel used to work for a firm</p> <p>24 of mine, for a friend of mine whose name was Mike</p> <p>25 Lieberbaum, all right, who had a firm called</p>

36 (Pages 138 - 141)

CONFIDENTIAL

<p style="text-align: right;">Page 142</p> <p>1 Lieberbaum &amp; Company. When I first went into 2 business we were friends. We went to high school 3 together, college together, and his father had a 4 business, Lieberbaum &amp; Company. And David Kugel 5 happened to work for him as a convertible bond 6 trader, you know. 7       So what happened was, but that firm went 8 out of business. They decided to liquidate the firm 9 and they all retired, you know. David Kugel was 10 working for that firm and looking for a job. Now, I 11 was trading convertible securities at that time, so 12 Lieberbaum said to me can you do me a favor and hire 13 David Kugel? 14       Q. Right. 15       A. And I said I don't really want to hire 16 David Kugel. I'm not looking for another trader. 17 And, quite frankly, David Kugel was sort of a pain 18 in the ass. You know, nice guy, but he was very 19 difficult to deal with because you couldn't have a 20 conversation with him that made any sort of sense; 21 but -- and we used to kid about that, you know. 22       This friend said look -- he was my good 23 friend, went to school. He said look, I'm trying to 24 find this guy a job. You know, I feel bad we're 25 closing the firm. Why don't you hire him? So I</p>	<p style="text-align: right;">Page 144</p> <p>1 historical prices of the convertibles. Most 2 convertibles, we trade at premiums. So we used to 3 have a -- and we used to have to do all this by 4 hand, you know, before computers with this Friden 5 calculator. We would track every convertible bond 6 and see when it was trading at a discount or when it 7 was trading at a premium. 8       So historically if you knew that a 9 particular convertible security traded let's say 10 typically at a three point premium but now all of a 11 sudden it went to a ten point premium, all right, 12 you would know that that premium is too high. It 13 should go back to historically to a three point 14 premium. 15       So we would go ahead and we would set up 16 the trade. We'd buy the convertible, short the 17 stock, all right, and then wait, hold them open, 18 which immediately had a loss. So you're setting up 19 a trade where you had a loss, but historically the 20 bond would close up and go back to a three point 21 premium. 22       You would then unwind the transaction, all 23 right, and you'd make a three point profit. It's 24 called Chinese arbitrage. Don't ask me why it was 25 called that. It was just ass backwards. So for</p>
<p style="text-align: right;">Page 143</p> <p>1 said I don't really want to hire him, Michael. So 2 he said -- you know, so I said look, he had a Friden 3 -- you probably are -- how old are you? 4       Q. Seventy-three. 5       A. All right. So you remember what Friden 6 calculators were? 7       Q. Sure. 8       A. The old with the hand crank? This is 9 before computers. Okay. Mike Lieberbaum's firm, he 10 had a Friden calculator, which was expensive. And I 11 was, you know, relatively young in the business. So 12 I said I want -- if you're liquidating the firm, I'd 13 like your Friden calculator because we used to use 14 it to figure out all the convertibles, you know, you 15 know. 16       So he said I'll tell you what. Take David 17 Kugel and I'll give you the Friden calculator. So 18 we always used to tease David Kugel and say the only 19 reason that we hired you is for the Friden 20 calculator. He used to be very sensitive to that, 21 but that was really a true story. 22       Now, I came up with a concept of -- I said 23 to David, I said this is your job. I said I want 24 you to track every convertible security that exists, 25 okay, and I want you to track and see what the</p>	<p style="text-align: right;">Page 145</p> <p>1 some reason that was what the industry -- so most 2 convertible trading went on at premiums, you know, 3 where you set it up. You had a loss, but you knew 4 what your loss was. 5       It was no more than three points. And 6 David Kugel used to have a huge spreadsheet 7 literally like this long that had tracked all the 8 convertibles. And we would just -- and that's what 9 we would do. So we would do business with our 10 customers, you know, doing this kind of trading. 11       I was doing it for the big four clients 12 and, quite frankly, it was like bending down and 13 picking up money. All right. Now, most people on 14 Wall Street didn't want to trade convertibles like 15 that because your profit was limited, you know. You 16 know, your loss was limited, but your profit was 17 limited. 18       Q. How scalable was that kind of trading? 19       A. It was -- well, it was -- everything was 20 relative. You know, when I first started in the 21 business my -- you know, what I considered to be a 22 great profit was different than let's say Goldman 23 Sachs did. All right. So in that -- when I went 24 into business all the convertible securities were 25 handled by a handful of European arbitrageurs.</p>

37 (Pages 142 - 145)

CONFIDENTIAL

Page 146	Page 148
<p>1 The whole business was handled by Goldman 2 Sachs, Rouss &amp; Company. There were maybe ten 3 foreign convertible firms. The joke in the industry 4 was that when you called up and asked a convertible 5 bond market maker what the price was, he would say 6 what do you want to do? You know, that was what -- 7 they all had this heavy Jewish accent, but these 8 guys were all money arbitrageurs in Europe. 9 Q. Right. 10 A. You know, and when they came to this 11 industry, they started trading the convertible 12 securities. All right. So after I got my brains 13 beat in, which to me, \$30,000 loss in 1963 was a 14 lot, I said listen, I can't possibly -- you know, 15 can't stay in this business like this because my 16 father-in-law is not going to keep on lending me 17 money to bail myself out. 18 So I said I can't do retail business. As a 19 matter of fact, the SEC said to me, Bernie, when 20 they examined my firm, the first examination and 21 they saw that I paid back the customers \$30,000 22 because they lost money, they said, you know, you 23 really can't keep doing this because how many times 24 are you going to do this? He said if you're going 25 to be responsible for your clients, you know, that's</p>	<p>1 says I'll tell you what we'll do. We'll give you 2 the odd lot pieces. We don't want to trade -- we 3 don't want to buy ten convertible bonds and eight 4 convertible bonds. We only want to buy 100 bonds 5 and so on. So if you want the small ones, if you're 6 willing to do the small pieces, you trade them. 7 We'll send the customers to you. 8 And I said that's fine with me because 9 whatever I made was good business for me. So I 10 started doing that and I developed this relationship 11 with these European arbitrageurs and they started 12 sending me the odd lot business. And then, of 13 course, kept on doing -- you know, I grew the 14 business and that's how I got started in the 15 business. 16 Q. I'll give you a break in a minute here. 17 When you give an answer like that, and I'm not going 18 to interrupt you because -- but it takes the court 19 reporter a while to recover from that. 20 A. Oh, I didn't realize you were still doing 21 it. 22 Q. She's constantly -- 23 A. I didn't realize. I didn't realize this 24 was on the record. 25 Q. Yeah. This is on the record.</p>
Page 147	Page 149
<p>1 not a business you want. So I said you know what? 2 I looked around for what I could do that had limited 3 risk. And convertible securities to me, I decided 4 that that was a business I wanted to be in. 5 So but the problem was it was controlled, 6 that business, by Goldman Sachs, by all these 7 handful of firms, by Bear Stearns and so on. So at 8 that time I went and I had -- I went to see Gus 9 Levy, who was the chairman of Goldman Sachs, you 10 know, and I went to Bear Stearns, Cy Lewis, who was 11 the chairman of that, and I said to them, you know, 12 I did things that probably people today would think 13 were stupid. 14 I had them -- I went up there and I said -- 15 made an appointment with them and I said listen, I 16 would like to trade convertible securities. And 17 they said Bernie, you know, this is not a business 18 for you. This is our business. You can't go into 19 this business. And I told them the story and they 20 -- I know it's hard for you to appreciate this now, 21 but I was appealing to them in those days. 22 And I said look, give me a break. Let me 23 make something. I told them my tale of woe and they 24 said okay. Look, you know what? If you want to 25 trade, if you want to trade convertible bonds, he</p>	<p>1 A. I thought it was just curiosity. I'm 2 sorry. 3 Q. No, no, no. Everything is on the record. 4 Okay. Let's go back, though, just to the -- so 5 we're back in 1970. You told us how this all got 6 started, and the majority of your business at that 7 point was premium arbitrage? 8 A. Both. Whenever I -- 9 Q. Both. You were doing discounts, but you 10 called discounts freaks just a moment ago; right? 11 A. Right. 12 Q. So when you spotted a discount opportunity 13 by watching it as you did, did you not immediately, 14 simultaneously, isn't that, you know, buy the stock 15 or short the stock, I should say? 16 A. Well, you always sort of did what's called 17 legging. In other words, when you -- you would buy 18 even -- you would always buy the -- if you thought 19 the bond was -- the mark was going to go up and you 20 thought the bond was going to appreciate, the stock 21 was going to appreciate because you know how to do 22 it, you would buy the bond first and then you'd sell 23 the stock later. You'd sell the stock on the way 24 up. You know, depending upon which way you thought 25 the market was going to go, that's how you determine</p>

38 (Pages 146 - 149)

CONFIDENTIAL

<p style="text-align: right;">Page 150</p> <p>1 which piece to buy first.</p> <p>2 Q. But --</p> <p>3 A. You couldn't normally --</p> <p>4 Q. I'm sorry.</p> <p>5 A. You couldn't normally go in and buy the</p> <p>6 bond and short the stock and lock in the profit</p> <p>7 immediately. You had to take some degree of risk</p> <p>8 while you're setting it up.</p> <p>9 Q. Isn't the classic definition of a discount</p> <p>10 arbitrage simultaneous buying and selling?</p> <p>11 A. No.</p> <p>12 Q. No?</p> <p>13 A. I mean, no. That's not the way it</p> <p>14 realistically works. There's always -- I mean, if</p> <p>15 you could do it that way, that would be fine, but</p> <p>16 you're totally limiting your --</p> <p>17 Q. Profit.</p> <p>18 A. You're not only limiting your profit.</p> <p>19 You're limiting your ability to do it because you --</p> <p>20 you have to be able to judge the market as well.</p> <p>21 It's not just a simple of just going in and having a</p> <p>22 guaranteed locked-in profit because the arbitrageurs</p> <p>23 would close that up immediately. In other words,</p> <p>24 you're competing against these guys. Obviously, if</p> <p>25 you can do a trade and have a guaranteed immediate</p>	<p style="text-align: right;">Page 152</p> <p>1 Q. Do you credit a fractional share or what do</p> <p>2 you do with it?</p> <p>3 A. Yeah. I mean, if, in fact -- if, in fact,</p> <p>4 a customer -- depends upon if you're talking about</p> <p>5 doing it for a customer or doing it for the firm?</p> <p>6 Q. I'm talking about a customer here. Okay.</p> <p>7 You're now selling this arbitrage strategy to a</p> <p>8 customer. You go in. You buy the arb. I'm calling</p> <p>9 it an arb.</p> <p>10 A. Right.</p> <p>11 Q. And then you short the stock and you do it</p> <p>12 simultaneously. And when you do that, you get a</p> <p>13 fractional share?</p> <p>14 A. Yeah. Typically if customers do a</p> <p>15 fractional share, you would give them the fractional</p> <p>16 share.</p> <p>17 Q. Do you give them the stock or cash?</p> <p>18 A. You could do either, both.</p> <p>19 Q. There are actually fractional shares that</p> <p>20 trade on the exchange?</p> <p>21 A. You make a fractional share. Typically you</p> <p>22 would give them a cash credit for the fractional</p> <p>23 share.</p> <p>24 Q. Typical, right?</p> <p>25 A. Yeah.</p>
<p style="text-align: right;">Page 151</p> <p>1 profit, that's the most -- that's the most ideal</p> <p>2 situation; but so you can do that, but even if you</p> <p>3 could do that, if you really want to be a good</p> <p>4 trader, you would buy it at a discount, you know.</p> <p>5 You start -- you buy the bond when it's a</p> <p>6 discount, but if historically it would always go to</p> <p>7 a premium, you wait, what's called lifting a leg, in</p> <p>8 other words, so you have a risk involved and then</p> <p>9 you'll unwind the transaction.</p> <p>10 MR. SHEEHAN: I want to get to that later.</p> <p>11 I agree with that.</p> <p>12 MS. CHAITMAN: I'm sorry to hear that.</p> <p>13 MR. SHEEHAN: No. I agree with what he</p> <p>14 just said.</p> <p>15 Q. (By Mr. Sheehan) If you hang onto it, that</p> <p>16 can happen, but isn't -- well, I won't say isn't.</p> <p>17 What's a fractional share?</p> <p>18 A. A fractional share is less than 100 shares.</p> <p>19 Q. When does that occur in an arbitrage</p> <p>20 situation?</p> <p>21 A. Not very often.</p> <p>22 Q. When you convert the bond, preferred,</p> <p>23 whatever you're converting, does it not always have</p> <p>24 a fractional share?</p> <p>25 A. Sometimes yes and sometimes no.</p>	<p style="text-align: right;">Page 153</p> <p>1 Q. But more likely cash a fractional share?</p> <p>2 A. Yeah.</p> <p>3 Q. Okay. When does that fractional share</p> <p>4 occur?</p> <p>5 A. I don't know when. I'm not sure.</p> <p>6 Q. Let me rephrase it. Does the fractional</p> <p>7 share not only occur when you sell the convertible</p> <p>8 security?</p> <p>9 MS. CHAITMAN: Objection to form.</p> <p>10 THE WITNESS: Does the fractional share</p> <p>11 ever occur?</p> <p>12 Q. (By Mr. Sheehan) No. I said does the</p> <p>13 fractional share only occur after you sell the</p> <p>14 convertible security?</p> <p>15 A. I'm not sure. I don't know the answer to</p> <p>16 that.</p> <p>17 Q. Well, if you don't sell the convertible</p> <p>18 security, there can't be a fractional share; can</p> <p>19 there?</p> <p>20 A. If you don't sell the security?</p> <p>21 Q. Yeah. So I'm not selling the convertible</p> <p>22 security. Can there be a fractional share?</p> <p>23 A. Probably not.</p> <p>24 Q. Okay. That was my point. Let me see. So</p> <p>25 let's go back to 1970. Again, you know, you were</p>

39 (Pages 150 - 153)



CONFIDENTIAL

Page 154	Page 156
<p>1 doing -- let me ask you, where were you doing the -- 2 and what I mean by this is market making or IA. 3 Where were you initially doing the convertible 4 arbitrage strategy. 5 A. Where? 6 Q. Yeah. Either market making -- where did it 7 start, market making or IA? 8 MS. CHAITMAN: Objection to form. 9 THE WITNESS: Objection to form? 10 MR. SHEEHAN: Yeah. She can do that, too. 11 She can do that. 12 THE WITNESS: Oh. It was one firm. You 13 know, it was all done -- you know, at that time I 14 was the only one doing it. It was I was the only 15 trader when I first started, so it was me. It 16 wasn't -- I didn't have -- David Kugel came in. You 17 know, I don't remember when he came in, in '70 18 something or other, but the whole firm was me. I 19 was doing it. 20 Q. (By Mr. Sheehan) I know it's one firm, but 21 my point is you had the market making, which is you 22 as a wholesale market maker; right? 23 A. Right. 24 Q. Over here you've got your IA business, 25 which is your discretionary trading?</p>	<p>1 order and I would do it for the customer. 2 Q. Right. 3 A. It depends upon -- you know, it was sort of 4 all mixed in together, but it depends upon what was 5 available. 6 Q. Well, when you're buying the stock in the 7 market making business and, as you say, you're a 8 market maker. You have to buy the stock. I 9 understand how market making works. 10 A. Well, the firm had a limited amount of 11 capital. 12 Q. Right. 13 A. So I could only -- you know, once I used up 14 the capital of the firm, all right, obviously, let's 15 say my capital could have been \$20,000 in the firm's 16 capital. So I could only -- I could only -- once I 17 finished buying -- I used that \$20,000 up, you know, 18 if Carl -- let's say if one of my clients gave me 19 \$100,000 to trade with, obviously, I would use that 20 hundred thousand dollars for the client to do 21 business. 22 I might do also 20,000 for the firm's 23 capital, but it was -- you know, I'm -- obviously, I 24 was limited to what I can do for the firm. 25 Q. So Shapiro, just use him. I know we're not</p>
Page 155	Page 157
<p>1 A. It was -- but it was all done by me as one 2 firm. It was always one firm. It may have been -- 3 you know, it was only later on when we had like 4 different departments because the rules required you 5 to have sort of different departments with different 6 compliance procedures and so on and different 7 supervisors, but when I started it was me. 8 Q. Okay. Just trying to figure out how this 9 worked. Okay. So you used the market making 10 inventory. I think this is your testimony. Tell me 11 if I'm wrong. You used a market making inventory 12 and used that inventory of stock in connection with 13 the convertible arbitrage strategy in the IA 14 business? 15 A. Correct. 16 Q. Okay. So the initial purchase would take 17 place in the IA business -- I mean, the market 18 making business? 19 A. Yeah, but if I was doing -- it was sort of 20 one and the same. In other words, I was making a 21 market around the customer security that I had. 22 Q. Right. 23 A. It depends upon sometimes if I -- sometimes 24 I would just do the business for the market making 25 for the profit and sometimes I would get a customer</p>	<p>1 supposed to name names -- 2 A. That's all right. 3 Q. -- but that doesn't apply to me. It only 4 applies to you. 5 MS. CHAITMAN: Thank you. 6 Q. (By Mr. Sheehan) So anyway -- because I'm 7 not suing the Picowers, so there you go. 8 A. Doesn't matter. 9 Q. Can yell at me if she wants. All right. I 10 don't know how we're supposed to comply with this. 11 So Carl Shapiro comes to you, gives you a hundred 12 grand, invest it at your discretion -- 13 A. Right. 14 Q. -- right? How do you deal with that? So 15 how would you take that hundred grand and put it 16 into a convertible arbitrage strategy? 17 MS. CHAITMAN: Objection to form. 18 THE WITNESS: I would buy whatever was 19 available, you know, for 50,000 or 100,000, whatever 20 was available. 21 Q. (By Mr. Sheehan) Of what? 22 A. In whatever security that I was trading 23 when that was available. 24 Q. Available in what sense? As a preferred or 25 as a discounted arbitrage?</p>

40 (Pages 154 - 157)

CONFIDENTIAL

<p style="text-align: right;">Page 158</p> <p>1 A. It could be any one of them. There was 2 no -- it was up to me. It was usually -- sometimes 3 it would be at a discount since it would be at a 4 premium, sometimes doing a unit, a warrant or a 5 right. It could be anything. 6 Q. Would you take that hundred grand and buy 7 that security we just talked about from your market 8 making account? 9 A. Well, it depends. You know, if it was -- 10 if it was the market making -- if it was trading 11 with the firm's capital, you know, it would be for 12 the market making account. 13 Q. Right. 14 A. If I was working a customer order, you 15 know, or with the customer's money, it would go into 16 his account. 17 Q. Okay. Were you clearing those trades prior 18 to DTCC yourself? 19 A. Clearing them myself, yeah. 20 Q. And how would you do that? 21 A. Those days the bonds would come in over the 22 window. It was a physical delivery. 23 Q. Right. 24 A. You would pay for it. And then if it was 25 convertible, typically we would use -- we would have</p>	<p style="text-align: right;">Page 160</p> <p>1 A. No. Well, if you were going to convert the 2 security and use the bank to do that, you would send 3 the security over to the bank and let them -- 4 Q. Convert? 5 A. They would hold it. They would actually 6 convert it. What the bank did depends upon what the 7 bank's position was. The bank may have -- the banks 8 may have been handling other customer accounts also, 9 so they could actually borrow the securities, 10 deliver you the securities. 11 There's all sorts of various, you know, 12 mechanisms of how they would handle it; but in the 13 pure sense the bank would then take the security and 14 deliver it, you know, to whatever method they use to 15 Chicago or whatever it is. 16 Q. Yeah. 17 A. You know, they would what they call draft a 18 collection. And then they would do the conversion, 19 get the stock and they would deliver you the stock 20 and then you would deliver the stock out. 21 Q. To cover your short? 22 A. Well, it wouldn't be covering -- yeah. It 23 would be your fail to deliver. 24 Q. Right. 25 A. Right.</p>
<p style="text-align: right;">Page 159</p> <p>1 the bank convert the security. We would never 2 convert the security ourselves physically because 3 the convertible -- the clearing agent, the 4 convertible agent may have been in Chicago. So we 5 weren't going to get our trade until the Chicago. 6 Q. Right. 7 A. So we would use one of the banks. We would 8 take the convertible security, send it over to the 9 bank, give them instructions to convert. 10 Q. All right. At the beginning then you have 11 a fairly active box? 12 A. Everything is relative. What do you 13 consider active? 14 Q. Well, with no DTCC and you're 15 self-clearing -- 16 A. No. 17 Q. -- so you had physical possession of all 18 your securities? 19 A. That's correct, right. 20 Q. Right. So and you used the banks just to 21 -- you know, to exchange as you say when you were 22 buying and selling? 23 A. Right. 24 Q. All right. You didn't use banks as 25 depositories?</p>	<p style="text-align: right;">Page 161</p> <p>1 Q. Okay. So how many customers did you -- in 2 the IA, I'm calling it IA, in the IA business did 3 you have to start? 4 A. Probably, you know, let's say 25. 5 Q. Okay. By 1980 how big was the IA and how 6 many customers did you have then? 7 A. Well, I had, you know, the four big clients 8 for sure. I had European clients in France. I was 9 dealing business with the Rothchilds with, you know, 10 a number of French big clients. And then I had my 11 father-in-law had sent up this account, Avellino &amp; 12 Alpern, which was a limited partnership where they 13 had their clients. 14 And they could have had typically probably 15 50 or 60 of their clients in his limited partnership 16 that I traded for that limited partnership. 17 Q. Avellino &amp; Alpern. Alpern is your 18 father-in-law? 19 A. Yeah. 20 Q. Whose first name is Sam? 21 A. Saul. 22 Q. Saul, okay. And he had an account? 23 A. Yes. 24 Q. All right. Avellino, did he have an 25 account?</p>

41 (Pages 158 - 161)

CONFIDENTIAL

Page 162	Page 164
<p>1 A. Well, they had -- he didn't have an 2 individual account himself. I don't recall that he 3 did. They had it -- they just had this limited 4 partnership account and he was part of it. 5 Q. What was the nature of the limited 6 partnership, if you know? 7 A. They had -- they had this -- they had a 8 bunch of their accounts. They were all sort of, you 9 know, somewhat wealthy individuals that they did the 10 accounting work for. So they -- they formed a 11 limited partnership. It was sort of like an 12 investment club where they -- let's say they had 13 \$100 million. It's a round number. 14 Q. Right. 15 A. That might have had, you know, fifty 16 clients. They couldn't have more than 100 clients 17 because the regulations were that in order for you 18 to not be an investment company, you had to have 19 less than 100 clients, which they clearly had -- you 20 know, that was never a problem for them. So let's 21 say they had 50 or 60 different clients in there. I 22 would -- I opened up an account. 23 I had an Alpern and Avellino or Avellino 24 and Alpern, whatever it was. That was the account. 25 I would then treat that as one account, as a limited</p>	<p>1 they would, you know, take all the actual 2 transactions themselves. 3 Q. Let's talk about those notes. Would those 4 notes guarantee interest to your knowledge? 5 A. The first time I found out about that was 6 in 1992 when the SEC, you know, told me that they 7 had all of these, that they had a number of -- as 8 far as I knew, they had like I don't remember 9 whether it was three accounts or four accounts. All 10 different Avellino and Alpern accounts, but they had 11 like maybe three limited partnership accounts, but I 12 wasn't aware of the fact that they were actually 13 issuing notes -- 14 Q. Right. 15 A. -- you know, to them because I had already 16 told them that you can only have 100 clients in a 17 limited partnership. Otherwise, you would have to 18 register as a -- as an investment company. They 19 claim that they thought that they were okay because 20 they were -- although they think they had like maybe 21 300 accounts as it turned out what the SEC said, but 22 they were a lot of family accounts. 23 So they said they were counting each family 24 as one account, even though there could be a 25 son-in-law, a son and so on and so forth. The SEC</p>
Page 163	Page 165
<p>1 partnership account. I would buy, you know, various 2 convertible bonds for them. I would then, you know, 3 send them the confirmation on the transaction. They 4 would get the -- they would then split that up. 5 If they had 25 or 50 accounts, they would 6 based upon the amount of money that each client had, 7 that would be what percentage each client had of 8 that -- of the limited partnership. And they would 9 -- they would actually report the individual 10 transactions. And each client would file his own on 11 his tax return, which Avellino and Alpern would 12 handle for them, being their accountant. 13 Q. Right. 14 A. They would show short-term capital gains, 15 you know, on each -- on the transaction. 16 Q. So from the beginning were you aware that 17 there were all these people behind Avellino and -- 18 A. Oh, yeah, yeah, yeah. I knew them all. 19 Q. Okay. 20 A. That was before Mike Bienes got involved 21 and my father-in-law retired. And then they went to 22 that. That's how their problem started. They 23 made -- he made a decision on his own without even 24 telling me, you know, that they were issuing notes. 25 They decided they would just pay them interest and</p>	<p>1 basically's position was that they said look, as a 2 matter of fact, when they called me up to tell me, 3 they said -- you know, they asked me, you know, I 4 got a phone call from the SEC to say, you know, you 5 have this account, you know, these accounts, these 6 accountants, you know, and they have too much money. 7 They have too much money, too many clients on there. 8 It's an investment company. 9 And I said -- and I told them how I was 10 handling it and they said yeah, okay, that's fine, 11 but these guys are paying notes. You know, it's 12 different. So I said, well -- you know, I was upset 13 with them. I said what the hell? They never told 14 me. So when I called them up I said listen, I'm 15 closing these accounts. I'm sending back the money. 16 The SEC said to me at the time, you know, 17 you don't have to do that. He said, you know, you 18 can just tell them to register, but I said no. I 19 don't want to do that. So, you know, I sent them 20 back all their money, closed their accounts. As a 21 matter of fact, the SEC when they -- as soon as this 22 happened the SEC came up for the whole examination. 23 They sent up the group chief from New York. 24 They looked at the accounts. They saw that all the 25 money was there. They saw that I was actually</p>

42 (Pages 162 - 165)

CONFIDENTIAL

<p style="text-align: right;">Page 166</p> <p>1 buying the securities because they were able to -- 2 they looked at the -- at my stock record. They 3 looked at DTC. They saw that I had the securities 4 and so on. And, you know, I said I'm closing the 5 accounts, and I did. And I returned all the money. 6 And then I took in the accounts. 7 My father-in-law called me up and he said 8 look, you know, these people are all crazy. They're 9 sending -- they're hysterical. You know, they're 10 relying upon the money to live on, these clients. 11 And they said they didn't do anything wrong. This 12 was all Mike Bienes's stupid -- so I said okay, 13 fine. I'll open up individual accounts, you know, 14 but I only want like \$500,000. I don't want an 15 account for 50,000 or 75,000. 16 So I said the account -- each account 17 could be 500,000 was the minimum. I said if they 18 want to take a five -- if they want to form a family 19 partnership, that's fine, but it can only be their 20 family. I don't want anybody -- I don't want to 21 have more limited partnerships. So they said fine 22 and that was what we did. And they opened up a 23 whole bunch of accounts, you know, like a few 24 hundred accounts. 25 Q. The three partnerships of Avellino and</p>	<p style="text-align: right;">Page 168</p> <p>1 look at convertible arb, arbitrage opportunities, to 2 guarantee an outcome? 3 A. Not -- there wasn't such a thing as a 4 guarantee of return. It's what you expected to 5 make, called an expect return. 6 Q. Didn't David Kugel actually look 7 historically backwards to take trades that had 8 already happened -- 9 A. No, no. 10 Q. -- and manufacture those into guaranteed 11 results? 12 A. No. 13 Q. Why would he have testified to that? 14 A. I have no idea. I told you that. 15 Q. Why whatever the Trustee said or did 16 influence David Kugel's testimony? 17 A. I don't know what happened between the 18 Trustee and David Kugel. You know, as I said, it 19 was -- you know, I was -- my clients all knew, you 20 know, there was no secret as to what our strategy 21 was or what it was. It was a very common strategy. 22 It wasn't rocket scientists. 23 So people knew that if you're going to do 24 hedge type of trading, whether it be any one of the 25 different kinds of arbitrage or hedge trading, what</p>
<p style="text-align: right;">Page 167</p> <p>1 Bienes before the SEC, were you guaranteeing a 2 return to them? 3 A. No, no, no. 4 Q. Were you trying to predetermine the amount 5 that you would give them? 6 A. No. They had -- I told them what the 7 expected return was. In other words, look, when you 8 did arbitrage, anybody did arbitrage, there was a -- 9 you had a what you would consider to be what would 10 be the reasonable rate of return for doing 11 arbitrage. It's no different than if you do a 12 covered option right, which was like the split 13 strike conversion was. 14 Q. Right. 15 A. You know, you're not going to do it for -- 16 you know, typically you would do it for double the 17 long bond rate. So if long bonds and Treasury bonds 18 were playing let's say five percent, you would 19 expect to make like 10 percent return; but, you 20 know, it depends. 21 In 1980, for example, interest rates were 22 12 percent. So, you know, unless you could do it 23 for 25, 30 percent return, you wouldn't do the 24 trade. 25 Q. Weren't you asking David Kugel to actually</p>	<p style="text-align: right;">Page 169</p> <p>1 your return would be. You wouldn't do it if you 2 didn't make at least double the bond rate. It 3 wouldn't pay to do it. So clearly David Kugel knew. 4 All my traders know we're not going to tie up the 5 firm's capital for ourselves or for a client unless 6 we can -- we have a good reason to believe at least 7 our goal was to make double the long bond rate. 8 So depending upon whether the bond rate 9 was -- let's say in 1980, for example, unless I 10 thought I could make, you know, 25 or 30 percent 11 return, you know, I wouldn't -- wouldn't do the 12 trade. If the interest rates were five percent, 13 then ten percent looked attractive to do it. 14 So if I -- David Kugel or any of my traders 15 knew, you know, don't tie up the firm's capital, 16 don't do a trade for making two or three percent, 17 might as well put your money in bonds. 18 Q. Right. 19 A. So, you know, David Kugel knew even if he's 20 trading for his own account, if David Kugel or any 21 of the traders came to me and said, well, okay, I'm 22 tying up the firm's capital and I'm making five 23 percent return, I'd say what are you? Crazy? I 24 mean, you know, we didn't do that. As a matter of 25 fact, we used to send our client, we had what they</p>

43 (Pages 166 - 169)

CONFIDENTIAL

<p style="text-align: right;">Page 170</p> <p>1 call a portfolio evaluation report where we would -- 2 a customer -- would send them when we were doing 3 arbitrage what the expected return was, what their 4 actual return or how much was their over and under. 5 You must have seen that these reports, they were 6 part of our records that were generated. 7 You saw that we said expected return, over 8 and under return and so on and so forth. And 9 depending upon the strategy and what you wanted to 10 do, that's what you made. So all of our -- when 11 people came to do arbitrage for us, it was always 12 from day one that the return was going to be -- that 13 the goal was to make double the long bond rate. 14 Q. How could you guarantee that? 15 A. We didn't guarantee it. It's what we 16 expected. We didn't guarantee anybody. 17 Q. Did you ever not do it? 18 A. Of course. What do you mean did we ever 19 not do it? 20 Q. Did you ever not do what you expected? 21 A. Sure, at times. 22 Q. So if we go through your records, you will 23 have losing periods of time? 24 A. Look, let me -- I see where you're going. 25 Let me -- let me tell you something. Let me give</p>	<p style="text-align: right;">Page 172</p> <p>1 was a very good return. And the guy never has -- he 2 very rarely has a losing quarter, okay, which was 3 true. He very rarely had a losing quarter. 4 And he would say, well, how the hell do 5 you always -- you know, how does that happen? I 6 said wait a minute. You understand that -- you 7 understand how the transaction works. And now 8 literally the Chairman of Union Bank of Switzerland 9 in my office and chairman of almost most of these 10 banks along with the guys that ran their trading 11 desk because when they were doing the due diligence, 12 everyone wanted it figured out. Madoff can't be 13 this smart, so what is the strategy, you know? 14 Explain it to me. 15 So I'd say okay, fine. And I would, you 16 know, show them what the strategy was, very vanilla 17 covered right with a quick wrapper. So that was 18 something that we sort of started, but everyone 19 understood what it was. They said -- I said and, 20 all right, so you understand that your loss is going 21 to be limited because the put is going to kick in. 22 So your loss is limited basically to one 23 or two percent on each trade and your profit is 24 typically, let's say, three percent. So you have a 25 two-to-one sort of ratio, all right, but you</p>
<p style="text-align: right;">Page 171</p> <p>1 you an example; okay? 2 Q. Yeah. 3 A. When -- 4 MR. SHEEHAN: Are you okay? 5 MS. CHAITMAN: Yeah. 6 MR. SHEEHAN: All right. 7 THE WITNESS: When we were doing -- 8 because nothing I'm telling you is not something 9 that was widely known and was given to reporters, to 10 people that wrote the books and so on. Nothing in 11 Madoff is really a mystery. All right. When we did 12 -- the only mystery was that we weren't actually 13 doing the trades, but our strategy was always very 14 clear. 15 So I'm going to tell you an example, give 16 you an example of one. The chairman of UBS, Union 17 Bank of Switzerland, one of the world's great Nazis 18 if you ever met him -- 19 MR. SHEEHAN: I did. 20 THE WITNESS: -- came up to my office. 21 All right. And because when we were doing the split 22 strike trades, all right, everyone said, well, 23 listen, you know, Madoff is making double -- he's 24 making -- you know, you know, he's making like a 25 12 percent return, which in those days, you know,</p>	<p style="text-align: right;">Page 173</p> <p>1 definitely from the day we start the trade, you 2 definitely can lose. If the market goes against us 3 and we're guessing wrong, we're going to lose one or 4 two percent. If we're right, we're going to make 5 three percent. 6 You're never going to make really more 7 than that because then you're going to be called 8 away. Then that was the strategy. So let's say one 9 percent loss, three percent, and everyone understood 10 that. We said okay. Now, typically the strategy is 11 like a three-month strategy because of the 90-day 12 options and so on and so forth. 13 We said so if you look at, you know, over 14 the course of a year, maybe we'll have three or four 15 losing quarters and the rest of it, you know, we 16 have gains, which everybody said, well, that's still 17 pretty good, you know. And we said you understand 18 the reason why you don't -- that the whole -- the 19 key to the strategy is that you're never forced to 20 liquidate the strategy even -- you're going to be 21 wrong. 22 We're going to set it up and we think the 23 market is going to go up. We may be wrong. You 24 know, two days after we set the strategy up, the 25 market may go against us and we may have a loss, but</p>

44 (Pages 170 - 173)

CONFIDENTIAL

Page 174	Page 176
<p>1 we don't have to sell it out because we have the 2 put. Until the put expires we can keep the trade 3 open, waiting for the market to reverse and go up. 4 If the market goes up, then we're fine and we're 5 going to make a profit. 6 If the market doesn't go up and continues 7 to go down, we're going to have a loss; but the big 8 key is you're not forced to sell prematurely unless 9 it happens within three months. 10 Q. Can I ask you a question? 11 A. Yeah. 12 Q. Didn't all your puts expire? 13 A. Huh? 14 Q. Didn't all your puts expire? 15 A. Eventually. Eventually they expired. 16 Q. Because you never lost? 17 A. No. What do you mean never? Wait a 18 minute, wait a minute. Let me finish. 19 Q. Then you never lose? 20 A. Yes, of course, we lost. 21 Q. But you -- all your puts expired. Saul 22 Katz said to me that he asked you one time why are 23 we buying puts, because we never lose. Do you 24 remember that? 25 A. Oh, a lot of my traders would say let's not</p>	<p>1 no. I'm only looking at it, you know, over the 2 course of a year or the course of months. And I 3 noticed that over the course of a year we had three 4 losing quarters, we had one losing quarter or we had 5 one losing month. 6 MR. SHEEHAN: Bless you. 7 THE WITNESS: Really, we had very few 8 losing quarters, but we did have losing months I 9 said if we close the trade out. So I said let me 10 show you -- let me show you a chart that shows you 11 what the strategy did on a daily basis. And they 12 would look and they would see that they had the 13 strategy set up for 90 days, but it could be ten 14 days where we actually had a loss had we closed it 15 out. 16 So if I was forced to close it out because 17 the option was going to expire, the put was going to 18 expire or not, I said there are lots of -- I said if 19 you look at the trade, you would see that this -- 20 you would see it looks like this. Okay. Now, we 21 would only close it out hopefully when we had it 22 here, but if we closed it out when we were not here, 23 we'd have a loss. 24 Q. Right. 25 A. So then he said ah. So there are loss --</p>
Page 175	Page 177
<p>1 buy the puts because why are we going to pay the 2 premium on the puts? 3 Q. Yeah. 4 A. And I would say because that the key to the 5 strategy is to be able to limit your loss. 6 Q. Right. 7 A. You know, you're not forced to sell. 8 Q. So we're on the split strike now, and I 9 want to go back to convertible arb, but just one 10 thing. Isn't split strike strategy, which is 11 common, it's not unknown, a conservative strategy? 12 A. Yes. 13 Q. Right. And you don't expect big returns 14 from that; do you? 15 A. No. 16 Q. Because you capture -- 17 A. Right. 18 Q. Yeah, okay. 19 A. So let me finish -- 20 Q. Sure. 21 A. -- the story; okay? 22 Q. Didn't mean to cut you off. 23 A. When they said -- you know, I said did you 24 ever look at the strategy, you know, on a day-to-day 25 basis and see what happened? So the guy said, well,</p>	<p>1 there would be loss trades. If they called me up 2 and said to me I want my money back, close out the 3 strategy, which no one -- very rarely did anyone do 4 that except in 2008 when people were getting margin 5 calls all over the place; but before that nobody 6 ever called up and said sell it out because I would 7 then say to them, listen, if you force me to sell it 8 out, I'll sell it out. I'm sending your money back. 9 Don't come back. Okay. 10 Q. I want to go back to the -- but I want 11 to -- 12 A. And let me just tell you one other thing. 13 Q. Sure. 14 A. You've heard of Jim Simons; right? 15 Q. Of course. 16 A. Okay. Now, I handled Jim's private 17 account, his foundation account. 18 Q. Yeah. 19 A. Now, when Jim Simons, who's probably one of 20 the smartest traders on Wall Street today, all 21 right, you know, called me up and he said to me, 22 look, he said, Bernie, he said you know what? He 23 said I'd like you to handle all of Renaissance 24 business as a dealer. Your market -- I want your 25 market makers to trade because we're sending our</p>

45 (Pages 174 - 177)

CONFIDENTIAL

Page 178	Page 180
<p>1 business down on the floor of the exchange of the 2 two Bear Stearns and, you know, they're clipping us 3 left and right on commissions and so on. So Madoff 4 has the fastest execution in the industry. I'm 5 going to let you do our business. 6 So I said really, Jim, I don't want your 7 business because your traders are too good. So I 8 don't really want Renaissance business. So he said 9 come on, come on. We'll give you the good business. 10 I said don't tell me you'll give me the good 11 business. You aren't giving me all your business 12 and I don't want my traders competing against yours 13 because we're going to lose money. 14 So he convinced me. He said look, just 15 take it, you know, but also I also want you do my -- 16 handle my foundation personal account. So he set up 17 an account, I don't remember, that was two million, 18 ten million. I don't remember it anymore. You 19 know, it wasn't a big account, but let's say I think 20 it was in the neighborhood of 10 or \$20 million. 21 So he understood as every one of my 22 clients understood the transaction. They saw it 23 because they got the confirmations. They saw what 24 was buying and selling. They had the ability to see 25 whether or not the trades could be done or couldn't</p>	<p>1 A. No. And if you believe that anybody 2 thought that I would -- why would anybody give me 3 money thinking that I was committing a fraud? 4 Q. Why did Jim Simon take his money out? 5 A. Because I'll tell you why Jim Simons -- 6 because Jim -- 7 Q. You know, he's testified so I have sworn 8 testimony of why he did, so let's hear what you 9 think. 10 A. Yeah. I know why. I'll tell you why he's 11 closing money out. Because he had -- he got wind 12 that the SEC was investigating me because they were 13 investigating him. What happened was the SEC was 14 investigating all of the hedge funds, had nothing to 15 do with Madoff. All right. 16 And the -- and Jim Simons, you know, was 17 getting -- had an inquiry about his firm. All 18 right. And one of the things was Madoff, was doing 19 business with Madoff. So Jim Simons knew that the 20 SEC was questioning me and, therefore, he wanted to 21 close out the transactions. 22 He had no idea that I wasn't doing the 23 trades because -- and none of them did. I don't 24 care what anybody says now. Well, I always knew. 25 Believe me, none of these guys would have done --</p>
Page 179	Page 181
<p>1 be done, and they -- so they saw the trade and the 2 trade made sense. If you'll remember going back 3 when you came down to visit me, I said to you when 4 you told me we're going to sue all these funds and 5 this, I said do yourself a favor. 6 If you think -- if you're going to believe 7 Harry Markopolos, who's one of the big idiots in our 8 industry, the great whistleblower, and believe him 9 that this strategy did not make any sense and if 10 you're going to say the reason your funds should 11 close out, you know, should have noticed a red flag, 12 don't say the strategy didn't make sense because I'm 13 telling you we had virtually every important trader 14 on Wall Street and the chairman of every firm had a 15 client -- had accounts with Madoff. 16 They knew the transaction made sense to do 17 it. They knew what my advantage was of being a 18 market maker and doing all this volume. 19 Q. But they also knew you weren't doing split 20 strike; isn't that true? 21 A. No. 22 Q. Didn't they all know you weren't doing 23 split strike? 24 A. No, no. 25 Q. They knew you were telling them that?</p>	<p>1 they're not crazy. Why would they want to be giving 2 money to a firm that was committing a fraud? They 3 didn't know. Now, there were some firms that didn't 4 care whether I shorted the stock to them. 5 As a matter of fact, as I -- as I told 6 people, all right, I got a call from Switzerland 7 once. This was -- I don't remember what year it 8 was. 9 Q. I think we're drifting from Jim Simons, but 10 you're going to connect that up or -- 11 A. No, no. 12 Q. Okay. 13 A. This was from -- I get a call from 14 Switzerland from one of the hedge fund managers in 15 Switzerland and he says hey, Bernie, you know what? 16 He said there's a rumor going around Switzerland 17 that the reason that you are -- you're able to do 18 these trades so successfully, which I never 19 considered being so successful, was that you're 20 front running -- you're front running all your -- 21 your market making orders, which, by the way, that's 22 what Markopolos told the SEC. 23 You know, because, obviously, you know, 24 if, in fact, I was front running the orders, you 25 know, that would be a great thing. It would have</p>

46 (Pages 178 - 181)

CONFIDENTIAL

<p style="text-align: right;">Page 182</p> <p>1 been, unfortunately, illegal and very easy to check 2 whether anybody is front running. And believe me, I 3 know that because I know what the rules are in the 4 industry. And when Markopolos went to the SEC and 5 said you're front running, the SEC said Bernie 6 wouldn't be front running. 7 So when they -- when they looked at it and 8 they looked at all the information, they said no, 9 no, this guy is not front running. And the reason I 10 wasn't front running, because I wasn't doing the 11 orders. So, of course, I wasn't front running 12 because I wasn't actually doing the trades. So the 13 SEC looked at that. They didn't know who was doing 14 the trades, but they knew I wasn't front running. 15 Now, let me finish. Switzerland thought I was front 16 running. 17 Q. I've been very good here. 18 A. You know what they said, front running? 19 They said if you're front running, that's great 20 because front running isn't illegal in Switzerland. 21 We don't care if you're front running. If the SEC 22 closes you down for an SEC violation, so you'll give 23 us our money back. We're happy. That's not our 24 problem. 25 Q. I'm aware of that.</p>	<p style="text-align: right;">Page 184</p> <p>1 testified to? 2 MR. SHEEHAN: Simons testified he couldn't 3 replicate what you were doing and got out. 4 THE WITNESS: Yeah. 5 MR. SHEEHAN: That's what he said. 6 THE WITNESS: Yeah, but do you know why he 7 couldn't? Because he wasn't a market making firm. 8 He wasn't doing the volumes that we were doing. 9 That's why he couldn't do it. 10 Q. (By Mr. Sheehan) I mean, yours was all 11 fictitious? 12 A. Wait a minute. It was fictitious because 13 -- all right. Let me -- 14 Q. It never happened. 15 A. Since you want to know this. 16 Q. No, no. Let's go back. We've got all day 17 tomorrow to talk about this. 18 A. Okay. 19 Q. I want to get back to the early '80s. All 20 right? 21 A. But let me just finish. Let me explain 22 something to you. 23 Q. All right. Go right ahead. I won't cut 24 you off. 25 A. Okay.</p>
<p style="text-align: right;">Page 183</p> <p>1 A. And I said I'm not front running. I wasn't 2 front running because I wasn't doing the trades. 3 Q. Right. And the reason you were always 4 successful is you were using yesterday's newspapers; 5 correct? You weren't actually trading, so you made 6 those trades based on yesterday's newspapers? 7 A. When I wasn't doing the trades, yes. 8 Q. Yes. 9 A. Yeah. That's no secret. I said that. 10 Q. So, therefore, no one, including Jamie 11 Simon, could replicate that; could he? 12 A. He could have if he was a market maker, 13 yeah. 14 Q. How could he do it without yesterday's 15 newspaper? 16 A. Let me ask you, don't you think that 17 they -- that they knew that I -- don't you think 18 that they originally thought that I was doing the 19 trades? Do you really believe that anybody gave me 20 money and knew that I was committing a fraud? 21 Q. People do it every day, Bernie. 22 A. Not these guys. 23 Q. All right. People do it every day. 24 A. Not these guys. Don't believe that, David. 25 MS. CHAITMAN: Is that what Simons</p>	<p style="text-align: right;">Page 185</p> <p>1 Q. I won't cut you off. 2 A. The people always wanted to know how much 3 volume I was doing. Okay. That was the big secret. 4 How much money is Bernie Madoff doing? Okay. And 5 typically they thought that I was doing \$20 million, 6 \$20 billion. 7 Q. Billion, yeah. 8 A. That was the -- that was the consensus. I 9 was doing 20 billion; okay? 10 Q. Yeah. 11 A. So it was about 20 billion because that -- 12 because when I filed an ADV report, the most I 13 showed was 16 billion. 14 Q. Right. 15 A. All right. But so they thought that it was 16 20 billion, but let's say it was when they finally 17 got the ADV report in 2006, it showed 16 billion. 18 So everybody said, well, 16 billion, that's a lot of 19 money; but this is -- how does Bernie Madoff do the 20 trades? 21 Okay. Number one, typically he never had 22 more than 50 percent of the money invested. 23 Fifty percent was in T bills, 50 percent was in the 24 marketplace. Sometimes it was 100 percent, but it 25 most of the time was not 100 percent, but let's</p>

47 (Pages 182 - 185)



CONFIDENTIAL

Page 186	Page 188
<p>1 assume it takes 16 billion. Let's assume I invested 2 16 billion at the most, which is what they thought. 3 Okay. The \$16 billion was invested over a period of 4 four days, you know. So, you know, it's 4 billion a 5 day, all right, at most, was 4 billion or 2 billion 6 depending upon how you want to look at it. 7 Q. Without an ounce of volatility? 8 A. Huh? 9 Q. No volatility? 10 A. Four billion dollars, for me to invest \$4 11 billion when you're doing 10 percent of the volume 12 of the business is nothing. So the people that -- 13 believe me, everything that you're saying, when guys 14 first came in, everybody figured, well, this guy 15 must have -- must be doing something wrong because 16 how could he possibly be making this profit? All 17 right. So then I -- but I heard that all from day 18 one when I was doing the trades, you know. 19 Q. In the '80s? 20 A. No. I wasn't doing this in the '80s. 21 Q. You said you were doing the trades? 22 A. You're doing convertible bonds. 23 Q. Right. 24 A. I wasn't doing split strike. 25 Q. Right.</p>	<p>1 Q. All through the '80s, I just want to be 2 clear, the big four did convertible bond? They 3 didn't do different strategies besides that? 4 A. No. Because what happened was -- 5 Q. Okay. 6 A. -- you know, you know, in 1980, before that 7 up to 1980 I was doing convertible bonds with them. 8 All right. The four big accounts were doing 9 convertible bonds. And what happened was in 1980 10 they came to me. They were doing straddles. 11 Everybody that was doing short-term trading in Wall 12 Street was hedging their trades using commodity 13 straddles. 14 Q. Right. 15 A. You remember, you know what commodity 16 straddles, silver straddles? 17 Q. Yeah, of course. 18 A. Okay. So they were doing silver straddles 19 through Bear Stearns and through E. F. Hutton and so 20 on. 21 Q. The big four? 22 A. Big four. All right. They were hedging 23 because the arbitrage was all short-term capital 24 gains. So they were making short-term capital gains 25 making, you know, nice returns; but they -- you</p>
Page 187	Page 189
<p>1 A. I'm talking about when I was doing 2 convertible bond trades, I wasn't doing it for 3 funds. I was doing it for -- just for my clients, 4 and that was no big deal for me to do that. I mean, 5 you're not -- now, you can sit here and say that I 6 never did the convertible bond trades because 7 that -- I wasn't doing the convertible bonds trades 8 to be a problem at all. 9 I mean, I was the largest convertible bond 10 trader in Wall Street at that time. Nobody thinks 11 that I was -- I wasn't managing that much money in 12 convertible bond trades even with the four big 13 clients because I wasn't doing convertible bonds for 14 them in 1980. 15 Q. When did the big four start the margin 16 accounts? 17 A. What happened was I was doing the big four 18 accounts when I started doing business for them. 19 I've been doing -- it started in the '70s. Someone 20 like Levy came in in the '90s and so on, and so but 21 let's assume I started doing it let's say in the 22 '80s when I was doing it. All right. And everybody 23 was doing convertible bond trades. And in those 24 days they were making, you know, 25, 35 percent. It 25 was no big deal to do that.</p>	<p>1 know, tax rates, you know, were 80-some odd percent, 2 you know. So they -- they were using the silver 3 straddles to hedge themselves. And that was fine 4 until the IRS started challenging the silver 5 straddles saying that there was no risk. These were 6 sham transactions and so on. 7 Q. Right. 8 A. And they were doing them through -- we 9 didn't do that business, but I was doing it for 10 these clients. I had recommended them to Bear 11 Stearns and Carl Shapiro had a son-in-law at E. F. 12 Hutton, so they were doing the straddles. 13 So in 1980 they came to me and they said 14 look, you know, Bernie, isn't there anything we can 15 make long-term capital gains, you know, because the 16 short-term, the arbitrage, the profits are great, 17 but the tax rates are killing us. And now we can't 18 use the straddles because the IRS is challenging the 19 commodity straddles for us. 20 So what can you do to generate long-term 21 gains? So I said wait a minute. Look, forget about 22 the real estate shelters because that was being 23 charged -- that was being -- that was being 24 threatened. Picower was doing the leasing things. 25 He had his leasing companies, cockamamie thing that</p>

48 (Pages 186 - 189)

CONFIDENTIAL

<p style="text-align: right;">Page 190</p> <p>1 he was doing. You know, everybody had their -- you 2 know, was doing something. All right. So they came 3 to me. Can you do -- what can you do to generate 4 long-term gains? I said the only thing you can do 5 for long-term gains is actually to put on long-term 6 positions, not do the arbitrage. 7 You can just -- you've got to buy 8 portfolio of stocks, but in order for that to work, 9 the market has to go up. And I can't tell you 10 whether the market is going to go up, you know, 11 from, you know, 1980. 12 Q. Right. 13 A. I said so you want to -- you know, that's 14 the only thing that's available. I don't want to do 15 any real estate tax shelters. I don't want you to 16 do any silver straddles anymore. You know, this is 17 the only game in town if you want to do that; but, 18 you know, I don't know if the market is going to go 19 up. I said I can put together a portfolio of 20 stocks, a diversified portfolio. I happened to like 21 the market, you know, in 1980, but there's no 22 guarantee. 23 And, you know, so I don't know what to 24 tell you. So they said, well, can't you hedge it? 25 You're supposed to be the great hedger. Can't you</p>	<p style="text-align: right;">Page 192</p> <p>1 the other side, put you guys together. The only 2 problem is you have to all understand that you can't 3 unwind these strategies prematurely because these 4 guys, you know, you're going to screw them up. So 5 if you're going to unwind, you both have to be 6 agreed to unwind at the same time. 7 So Shapiro and the rest of these guys, you 8 know, Picower, said okay, fine. It's a risk, but 9 it's better than what we were doing anyhow. We have 10 no other choice, so let's do it. So I put the 11 portfolio on for the four big clients, which is not 12 difficult to do. 13 Q. When did you do that? 14 A. 1980 I started doing that with them. 15 Q. Okay. 16 A. I put the portfolio on for them. You know, 17 the portfolio and the French guys were doing it. 18 Their side was great. It was fine. And the market, 19 of course, started to march up from 1980 to 1987. 20 Everything was going along fine. And, of course, my 21 four big clients, being the greedy people that they 22 were, never wanted to close out the transaction. 23 They wanted to keep rolling it, which is 24 very typical because everybody -- nobody wanted to 25 close out the money. They just -- let's roll it,</p>
<p style="text-align: right;">Page 191</p> <p>1 hedge it? I said yeah. You can hedge it. There 2 are certain ways you can do it. You can go short 3 against the box. You know, you can do, you know, 4 pairs trading; but, again, you have to hold them for 5 a one-year period. That was the holding period. 6 So I, you know, explained to them all this 7 stuff and I said and there's no guarantee. You want 8 to do it, but, you know, it's better than nothing if 9 you want to do it. So they said fine. Let's do 10 that, you know. So I said so all right. Now, 11 coincidentally at the same time they were doing 12 that, I was doing a hedging strategy for a group of 13 European investors. 14 Q. I remember you telling this already. 15 A. Yeah. So they as it turned out, it would 16 have been -- they would have been a great 17 counterparty for these other traders because they 18 were doing the hedging strategy. As I explained to 19 you, they had to be in -- they had to be in U.S. 20 securities in order to hedge the French franc and so 21 on and so forth. So, you know, I said to them okay, 22 look, this is the deal. 23 I can set up portfolios or strategies for 24 you guys for the big four. I said I have 25 counterparties that supply the liquidity to you on</p>	<p style="text-align: right;">Page 193</p> <p>1 you know, just keep rolling it and because why 2 should I pay the tax? Why do I have to pay the tax 3 money? The rate was still, you know, even on those 4 long-term gains were better than short-term gains. 5 They didn't even want to pay that, so but 6 the market accommodated everybody. So from 1980 to 7 1987 everybody was making a lot of money doing this 8 strategy and everything was fine. Comes the crash 9 in 1987. The shit hit the fan or forget about 10 repeating that, you know, and these -- my four big 11 clients said holy cow. We've now, you know, had 12 seven years of long-term gains. 13 You know, we're going to get killed. 14 We're going to give all that up with the market 15 going down. I said relax. Don't worry about it. 16 The market eventually will turn, I said, and you 17 guys made a commitment to us. We have this 18 commitment to, you know, to the French people. And 19 I'm not going to unwind. I can't unwind them, you 20 know. 21 So these guys -- that's when they started 22 to hold on. They said close out the -- sell the 23 longs, don't worry about the shorts. The market is 24 going to go -- continue to go down. We're not 25 worried about it. We'll hold you harmless for any</p>

49 (Pages 190 - 193)

CONFIDENTIAL

Page 194	Page 196
<p>1 losses.</p> <p>2 MR. SHEEHAN: Okay. You want to take two</p> <p>3 minutes? I thought you would.</p> <p>4 THE COURT REPORTER: Yes.</p> <p>5 MR. SHEEHAN: All right. I know we have</p> <p>6 to leave soon, but I --</p> <p>7 MS. CHAITMAN: Yeah. No. Whatever you</p> <p>8 want, yeah.</p> <p>9 MR. SHEEHAN: I don't want this young lady</p> <p>10 to have her hands fall off because when you get on a</p> <p>11 roll, Bernie.</p> <p>12 THE VIDEOGRAPHER: Going off the record.</p> <p>13 The time is 2:14 p.m.</p> <p>14 (A recess was taken.)</p> <p>15 THE VIDEOGRAPHER: Back on the record.</p> <p>16 This beginning disc number four. The time is</p> <p>17 2:25 p.m.</p> <p>18 Q. (By Mr. Sheehan) Do you recall when you</p> <p>19 started using DTC?</p> <p>20 A. No.</p> <p>21 Q. Would it help if I called it NSCC instead?</p> <p>22 A. What year? Certainly before DTC because,</p> <p>23 you know, I don't remember the year. It's in the</p> <p>24 report somewhere.</p> <p>25 Q. Right. Early '80s? That work for you?</p>	<p>1 A. Yes.</p> <p>2 Q. Did you have any other account?</p> <p>3 A. No.</p> <p>4 Q. Okay. You talked about all your stocks</p> <p>5 would be there except for bank loans. Do you</p> <p>6 remember that?</p> <p>7 A. Right.</p> <p>8 Q. All right. Would not the fact that there</p> <p>9 was a bank loan with regard to certain stocks also</p> <p>10 show in your account?</p> <p>11 A. There would be a what?</p> <p>12 Q. If you had a stock loan?</p> <p>13 A. Right.</p> <p>14 Q. All right. To the bank and the bank,</p> <p>15 therefore, had your stocks pledged --</p> <p>16 A. At DTC.</p> <p>17 Q. Yeah, DTC. It would also show in your</p> <p>18 account that you had so pledged those stocks; would</p> <p>19 it not?</p> <p>20 A. Yes, probably.</p> <p>21 Q. Okay. Could you pledge customer stocks?</p> <p>22 A. Could we?</p> <p>23 Q. Could you?</p> <p>24 A. Yeah.</p> <p>25 Q. You could use that for stock loan purposes?</p>
Page 195	Page 197
<p>1 A. Yes, yeah.</p> <p>2 Q. Early '80s. We'll work with that.</p> <p>3 A. Yeah, because I was -- I was chairman of</p> <p>4 NSCC 1984 through 1987, so --</p> <p>5 Q. Right. At that point you're still</p> <p>6 obviously -- were your stocks then on deposit at</p> <p>7 NSCC?</p> <p>8 A. No. NSCC didn't hold. They weren't a</p> <p>9 depository.</p> <p>10 Q. Okay. What function did they perform?</p> <p>11 A. Just the clearing and settlement, the</p> <p>12 settlement, money settlement, the netting. So</p> <p>13 securities weren't delivered there.</p> <p>14 Q. Uh-huh, okay. So were you still holding</p> <p>15 your securities physically at that point?</p> <p>16 A. Yeah. We were holding them physically or</p> <p>17 down at the banks.</p> <p>18 Q. Uh-huh, okay. Where were you located in</p> <p>19 the early '80s?</p> <p>20 A. 110 Wall Street probably. We moved up in</p> <p>21 sometime in the mid-'80s, I think, to 110 Wall -- I</p> <p>22 mean, to 885 3rd.</p> <p>23 Q. Okay. I wanted to clarify something else,</p> <p>24 too. You talked earlier about DTCC; right? You had</p> <p>25 a -- the account there was 646?</p>	<p>1 A. Yes.</p> <p>2 Q. Okay.</p> <p>3 A. Either at -- it depends upon whether we did</p> <p>4 it at DTC or we did it at our banks, at one of the</p> <p>5 banks.</p> <p>6 Q. Okay. So let's go back to the 1980s and</p> <p>7 the long strategy that you started --</p> <p>8 A. Right.</p> <p>9 Q. -- for the big four. The big four at the</p> <p>10 same time, were they still doing convertible arb --</p> <p>11 A. No.</p> <p>12 Q. -- at that point?</p> <p>13 A. They were -- some of -- I think Stanley</p> <p>14 Chase was doing it for some of his accounts. He was</p> <p>15 doing -- he was still doing convertible bonds. Oh,</p> <p>16 in 1980 you're talking about?</p> <p>17 Q. In the '80s when you started the long</p> <p>18 strategy.</p> <p>19 A. In the '80s. He may have been doing it.</p> <p>20 They may have been doing it for some of their</p> <p>21 accounts, some of their family accounts, you know,</p> <p>22 the kids' accounts and so on.</p> <p>23 Q. Yeah. Would you say the majority of your</p> <p>24 convertible arbitrage strategy in the '80s was</p> <p>25 premium trading?</p>

50 (Pages 194 - 197)

CONFIDENTIAL

Page 198	Page 200
<p>1 A. I don't know. Probably, probably.</p> <p>2 Q. Okay. And how many customers? You know,</p> <p>3 let's count Avellino and Bienes as one.</p> <p>4 A. Right.</p> <p>5 Q. And then you've got the big four. That's</p> <p>6 five. How many more customers did you have up to</p> <p>7 1987? I know that's hard, but just your best</p> <p>8 thought on that.</p> <p>9 A. My brain is a little fried to begin with --</p> <p>10 Q. Yeah.</p> <p>11 A. -- so but I don't know. Probably I would</p> <p>12 say no more than 50, I would say. I'm guessing.</p> <p>13 Q. Okay. So in 1987 there's a crash and</p> <p>14 you've testified to this. I'm not going to repeat</p> <p>15 it. You may, but I'm not going to; but seriously,</p> <p>16 why did you feel compelled to cover those shorts?</p> <p>17 A. Which shorts?</p> <p>18 Q. Well, when you were saying you would cover</p> <p>19 the short positions of the big four and they</p> <p>20 indemnified you, they were big boys. Why wouldn't</p> <p>21 you just say to them hey, you're in the game?</p> <p>22 A. Do you know how many times I ask myself</p> <p>23 that now?</p> <p>24 Q. Yeah.</p> <p>25 A. I mean, look, I'm not proud that I did what</p>	<p>1 securities industry. When everybody called you up</p> <p>2 and said I want to sell -- when Merrill Lynch called</p> <p>3 you and said I'm selling you a thousand shares of</p> <p>4 IBM or a thousand shares of Intel, there was no</p> <p>5 contract.</p> <p>6 You did the trade over the phone. You</p> <p>7 waited until you got your confirmation, which may</p> <p>8 have been, you know, two days later or it may have</p> <p>9 been five days later, and you waited and you assumed</p> <p>10 that they were going to deliver on time. And if</p> <p>11 they didn't, you were screwed. There was no written</p> <p>12 contract.</p> <p>13 And in 50 years that I was in business, I</p> <p>14 never, ever had anyone not honor their contract.</p> <p>15 You never thought about it. It was something that,</p> <p>16 you know, if you're in this industry, your word was</p> <p>17 your bond literally and that was it. You trusted</p> <p>18 everybody. And that's the way the industry operated</p> <p>19 and for the most part still operates that way today</p> <p>20 but not as much.</p> <p>21 All right. So when I started doing</p> <p>22 business with all my clients, I was a little guy</p> <p>23 with nothing. No one had any reason -- and Carl</p> <p>24 Shapiro always tells this story famously. When he</p> <p>25 gave me \$100,000, people thought he was crazy. Why</p>
Page 199	Page 201
<p>1 I did, you know. I spent a lot of hours with a</p> <p>2 psychologist here trying to analyze why I did what I</p> <p>3 did or I -- I had a -- a very special relationship</p> <p>4 with the big four clients, all right, particularly,</p> <p>5 you know, with Carl Shapiro and Norman Levy and Stan</p> <p>6 Chase.</p> <p>7 Picower was a little bit different, but</p> <p>8 look, one of my problems was I always wanted to</p> <p>9 please everybody. You know, that was my thing</p> <p>10 forgetting about whether it was my -- you know,</p> <p>11 whether, you know --</p> <p>12 Q. But this was a billion dollars, a billion</p> <p>13 dollars that you were going to go at risk for?</p> <p>14 A. Well, I was -- I had very special</p> <p>15 relationships with the people in France. I had a</p> <p>16 special relationship with Shapiro, and I had given</p> <p>17 my word. You know, something about the securities</p> <p>18 business, you know, the -- we -- everybody did</p> <p>19 business on trust.</p> <p>20 I know it sounds strange coming from me,</p> <p>21 all right, but when I went into business the first</p> <p>22 thing I learned from both Cy Lewis and Gus Levy is</p> <p>23 they said to me, Bernie, whatever you do, you know,</p> <p>24 in this business, never break your word because</p> <p>25 there was no such thing as written contracts in the</p>	<p>1 would anybody give me? I was this little kid from</p> <p>2 Brooklyn, didn't go to Harvard or so on. Why would</p> <p>3 anybody trust me to give me business, you know, turn</p> <p>4 their money over to me on a discretionary basis</p> <p>5 basically and, you know, and go with it?</p> <p>6 All right. They did. And because they</p> <p>7 showed -- he showed faith in me and guys like Levy</p> <p>8 and so on did, all right, I felt obligated to keep</p> <p>9 my word. And it was the same thing when I did</p> <p>10 business in Europe, you know. People showed a lot</p> <p>11 of faith in me. Now, I made them a lot of money.</p> <p>12 They weren't doing it, you know, as a philanthropy,</p> <p>13 but there was a special relationship I had with</p> <p>14 them.</p> <p>15 And all of these clients, I was like a son</p> <p>16 to them and they were like surrogate fathers to me.</p> <p>17 All right. So when the crash came in '87 -- and</p> <p>18 also I had went from nothing. You know, I started</p> <p>19 my business with literally \$500, you know. You</p> <p>20 know, all of a sudden, you know, by '87 I was a rich</p> <p>21 guy.</p> <p>22 At least I thought I was very successful</p> <p>23 and everybody in the industry thought I was like,</p> <p>24 you know, this terrific, terrific success story,</p> <p>25 which I was. All right. So when the crash came in</p>

51 (Pages 198 - 201)

CONFIDENTIAL

<p style="text-align: right;">Page 202</p> <p>1 '87 and these guys panicked on me, which is not a 2 surprise in hindsight because the one thing every 3 one of them was, which is everybody in the industry 4 is, they're greedy. All right. So they all 5 panicked. They didn't want to give up their returns 6 and I made the mistake. What I should have said to 7 them was look, this is the agreements you have. 8 Now, could I have sued them? There was no 9 -- there was no written contract, all right, when we 10 made these agreements to, you know, to not unwind, 11 you know, prematurely. This was all, you know, 12 arm's length agreements. These were not -- there 13 were no contracts in that. So I didn't have the 14 right to litigate with Carl Shapiro and Jeff Picower 15 and say listen, you can't sell. 16 You know, if they wanted to sell 17 regardless of whether they were short, I could have 18 said no, you've got to sell. I could have said 19 cover your shorts, too, in other words, but I 20 didn't. All right. 21 Q. That was my question. Why didn't you tell 22 them cover your own shorts? 23 A. Because they said to me -- after we argued 24 and argued for days, everybody says don't panic. 25 Now, you have to understand also that everybody that</p>	<p style="text-align: right;">Page 204</p> <p>1 They didn't want to kill the goose that laid the 2 golden egg. And they were so sure that the market 3 was -- the shorts were not going to be a problem. 4 So they said fine. We'll hold you harmless. Close 5 out, sell the longs out so we get the advantage of 6 the long-term gains. 7 Let's not worry about the shorts. We'll 8 take responsibility of the shorts because I said all 9 right, the market eventually is recovered. You're 10 going to lose money on the shorts. They said we're 11 not worried about it. That's why. In hindsight now 12 it looks like a stupid thing to do and it was. 13 Q. You know, we've looked everywhere. Ellen 14 has actually asked us for the hold harmless 15 agreements. We can't find them. Would Price 16 Waterhouse Cooper as you mentioned have yours? The 17 likelihood, it's a long time ago so when it 18 happened. 19 A. No. I mean, you know, Ed Kostin, 20 unfortunately, has been dead a long time by now. He 21 did it. I don't know. You know, look, I mean, if 22 you looked for the trust agreements, you would see 23 that I was the -- I was the Trustee and the executor 24 of all of their trust agreements. Now, they've 25 probably changed it by now.</p>
<p style="text-align: right;">Page 203</p> <p>1 was trading convertible bonds through me when the 2 crash came in '87, they had a windfall because every 3 convertible bond went to premiums. So the guys that 4 were doing convertible bonds, they thought I was a 5 goddamned codified genius because the market 6 crashed, but all convertible bonds, you know, which 7 you would expect them to do, went to premiums. 8 These guys weren't doing convertible bonds 9 except for some of their accounts, as I said, so 10 they didn't -- you know, everybody said -- I said 11 now, look, don't panic. The market will go up. We 12 knew Reliant went down because of the United 13 Airlines bust and the merger and so on. You know, 14 they didn't want to. They just said look, let's 15 sell and get out of it. 16 All right. I didn't -- I couldn't force 17 them to cover the shorts because I had the 18 Europeans, the French guys on the other side of the 19 trades. I couldn't close them out prematurely. So 20 that's why I didn't unwind. 21 So and then they said to me, look, as much 22 as I -- all I can use is moral-suasion. And they 23 didn't want to screw me either generally because, 24 number one, we had a close, family-type 25 relationship. And also I made them a lot of money.</p>	<p style="text-align: right;">Page 205</p> <p>1 Q. Right. 2 A. But they -- look, there was meetings with, 3 for example, I don't know whether -- Paul 4 Konigsberg, did he ever go to jail or did he not go 5 to jail? 6 MR. GOLDMAN: He's in jail. 7 THE WITNESS: He did not go to jail? 8 MR. GOLDMAN: Konigsberg went to jail. 9 MR. SHEEHAN: No. He walked. 10 MR. GOLDMAN: Not Konigsberg. I'm 11 thinking of someone else. Okay. 12 THE WITNESS: Okay. 13 MR. SHEEHAN: He should have gone to jail. 14 THE WITNESS: Huh? Look, well, I don't 15 think anybody should go to jail, but -- 16 MR. SHEEHAN: But anyway -- 17 THE WITNESS: -- look, these people, there 18 were meetings held, you know, where the family 19 because, look, when these guys made these agreements 20 with me, all right, I said look, these guys were 21 old. They were -- you know, Carl Shapiro thought he 22 was going to die. He's still alive as far as I 23 know. 24 MR. SHEEHAN: He is. 25 THE WITNESS: Carl, he must be 104, for</p>

52 (Pages 202 - 205)

CONFIDENTIAL

<p style="text-align: right;">Page 206</p> <p>1 crying out loud, but when he was 60 some odd years 2 old he called me up hysterical when he had his first 3 Bell's palsy attack to Boston and said look, I'm 4 going to die and so on and so forth. 5 And that's when I made Paul Konigsberg his 6 accountant because, you know, at that time Coopers 7 and -- PaineWebber, who is Coopers and Lybrand 8 really, was his accounting firm; but he wanted, you 9 know, a closer relationship with Paul Konigsberg, 10 who became his accountant. 11 Q. (By Mr. Sheehan) Who's he? I'm sorry. 12 A. Carl Shapiro. 13 Q. Oh, I'm sorry. 14 A. All right. So all of these guys, most of 15 them except for Picower, but Picower was unhealthy 16 to begin with. He'd had three heart attacks and 17 he'd had, you know -- what does he have? I forgot 18 what the disease is, you shake all the time. 19 MR. GOLDMAN: Parkinson's. 20 THE WITNESS: Parkinson's, right. I said 21 look, you know, we have these agreements. I said I 22 want the family to make -- I want to make sure your 23 children know this. They weren't really children. 24 They weren't much younger than -- you know, younger 25 than me, so I said -- but everybody knew of these</p>	<p style="text-align: right;">Page 208</p> <p>1 year? 2 MR. SHEEHAN: '08. 3 THE WITNESS: Oh, that was the foundation 4 -- that was for the charitable thing that we had. I 5 was -- we had -- I was raising the money for cancer 6 then, you know, and Andy had been diagnosed -- 7 MR. SHEEHAN: Right. 8 THE WITNESS: -- with cancer. And I 9 forgot the name of our -- the Madoff foundation we 10 had. And I -- they were on the board. It was a 11 board meeting. 12 Q. (By Mr. Sheehan) Did you not discuss the 13 status of BLMIS that day? 14 A. No, no. 15 Q. You'd just paid out \$11 billion. Two days 16 later you're going to get turned into the FBI, and 17 you didn't mention anything? 18 A. Paying out \$11 billion? 19 Q. Pardon? 20 A. What do you mean paying out 11 billion? 21 Q. You had just paid out over the past year 22 \$11 billion in redemptions? 23 A. Oh, yeah. 24 Q. Here's the big four, Fred and other people 25 as you're sitting here?</p>
<p style="text-align: right;">Page 207</p> <p>1 agreements, these arrangements that they were 2 responsible for any losses. And we had meetings and 3 everyone knew that. So I wasn't even worried about 4 having, you know, written agreements. We had them, 5 but when I said to them, look, you know what? When 6 you die, I said I want -- who's -- you know, you 7 tell me I'm still handling your investments. 8 So they -- Levy, for example, took JP 9 Morgan off -- it wasn't JP Morgan. It was Chemical 10 at the time. Took Chemical and its Trustee and 11 executor of his estate off and he made me that. I 12 was going to get to handle all and their kids had to 13 sign agreements that I was the one that was going to 14 handle, you know, all of their monies and I had no 15 responsibility. So this was -- you know, that's 16 what the agreements were. They all knew what was 17 going on. 18 Q. We're going to end with this today, all 19 right, and we'll start tomorrow morning. 20 A. Uh-huh. 21 Q. Early in December you had a meeting in your 22 office. The big four was there. Fred was there. 23 Other people were there. What was the purpose of 24 that meeting? 25 MS. CHAITMAN: Early December of what</p>	<p style="text-align: right;">Page 209</p> <p>1 A. No. The only one that was there was Fred. 2 Shapiro wasn't there. One of his -- Bob Jaffey was 3 there. I don't think Jeff Picower was there. I 4 don't know if his wife was there. I don't think 5 Picower was there. Either he may have been in 6 Florida. No. We didn't -- I mean, I knew that I 7 was in trouble, but no one else did, including my 8 wife. 9 MR. SHEEHAN: Okay. 10 MS. CHAITMAN: When you say Fred, are you 11 referring to Fred Wilpon? 12 THE WITNESS: Yeah. He was on the board. 13 He was on the board, my board. 14 MR. SHEEHAN: Okay. Let's end it there. 15 THE VIDEOGRAPHER: Okay. This concludes 16 the deposition. Going off the record at 2:42 p.m. 17 (The deposition was adjourned at 2:42 18 p.m.) 19 * * * * * 20 21 22 23 24 25</p>

53 (Pages 206 - 209)

CONFIDENTIAL

Page 210

1 CERTIFICATE  
2 NORTH CAROLINA:  
3 GUILFORD COUNTY:  
4 I hereby certify that the foregoing  
5 deposition was reported, as stated in the caption,  
6 and the questions and answers thereto were reduced  
7 to the written page under my direction; that the  
8 foregoing pages 1 through 209 represent a true and  
9 correct transcript of the evidence given. I further  
10 certify that I am not in any way financially  
11 interested in the result of said case.  
12 I have no written contract to provide  
13 reporting services with any party to the case, any  
14 counsel in the case, or any reporter or reporting  
15 agency from whom a referral might have been made to  
16 cover this deposition. I will charge my usual and  
17 customary rates to all parties in the case.  
18 This, the 10th day of May, 2017.  
19  
20  
21 *K Denise Neal*  
22  
23 K. Denise Neal, RPR  
Registered Professional Reporter  
24 Notary Public No. 200517500101  
25

54 (Page 210)